

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT

OF WEST VIRGINIA

* * * * *

SCOTT T. BALLOCK,

*

Plaintiff

*

Case No.

vs.

*

1:17-CV-52

ELLEN RUTH COSTLOW,

*

STATE TROOPER MICHAEL

*

KIEF, STATE TROOPER

*

RONNIE M. GASKINS,

*

STATE TROOPER CHRIS

*

BERRY,

*

Defendants

*

* * * * *

DEPOSITION OF

MICHAEL KIEF

May 28, 2019

Any reproduction of this transcript is prohibited without
authorization by the certifying agency.

DEPOSITION

OF

MICHAEL KIEF, taken on behalf of the Plaintiff herein,
pursuant to the Rules of Civil Procedure, taken before
me, the undersigned, Guy Starrett, a Court Reporter and
Notary Public in and for the State of West Virginia, at
the offices of Steptoe and Johnson, PLLC, 1085 Van
Voorhis Road, Suite 400, Morgantown, West Virginia, on
Tuesday, May 28, 2019 beginning at 1:11 p.m.

A P P E A R A N C E S

CHARLES J. CROOKS, ESQUIRE

Crooks Law Firm PLLC

244 Pleasant Street

Morgantown, WV 26505

COUNSEL FOR PLAINTIFF

MARK JEFFRIES, ESQUIRE

Step toe and Johnson, PLLC

400 White Oaks Boulevard

Bridgeport, WV 26330

COUNSEL FOR DEFENDANTS STATE TROOPER MICHAEL KIEF/

STATE TROOPER RONNIE M. GASKINS/STATE TROOPER CHRIS

BERRY

P. TODD PHILLIPS, ESQUIRE

Lyons Phillips Legal Group, PLLC

141 Walnut Street

Morgantown, WV 26505

COUNSEL FOR DEFENDANT ELLEN RUTH COSTLOW

I N D E X

WITNESS: MICHAEL KIEF

EXAMINATION

By Attorney Crooks 7 - 248

By Attorney Phillips 248 - 263

By Attorney Jeffries 264 - 267

DISCUSSION AMONG PARTIES 267

CERTIFICATE 268

1	<u>EXHIBIT PAGE</u>		
2			
3			PAGE
4	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
5	Exhibit 1	Policies and Procedures	79
6	Exhibit 2	Call Summary Report	79
7	Exhibit 3	8/22/13 Email	98
8	Exhibit 4	Memo from Captain	
9		Merrill	98
10	Exhibit 5	Complaint Report	137
11	Exhibit 6	Domestic Violence Report	169
12	Exhibit 7	FBI Documents	190
13	Exhibit 8	Warrant for Arrest	
14		- Harassment	205
15	Exhibit 9	Warrant for Arrest	
16		- Unwanted Communication	205
17	Exhibit 10	Motion to Dismiss	
18		Charges	213
19	Exhibit 11	Investigation Report	235
20			
21			
22			
23			
24			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OBJECTION PAGE

ATTORNEY

PAGE

Jeffries	17, 74, 94, 104, 130, 144, 148,
	152, 186, 192, 208, 212, 230
Phillips	230

S T I P U L A T I O N

(It is hereby stipulated and agreed by and between counsel
for the respective parties that reading, signing, sealing,
certification and filing are not waived.)

P R O C E E D I N G S

MICHAEL KIEF,
CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
FOLLOWS:

EXAMINATION

BY ATTORNEY CROOKS:

Q. Okay.

Let's start real easy. Full name and date of
birth.

A. Lieutenant Michael Kief.

Q. Okay.

A. Date of birth is 11/25/1968.

Q. What's your middle name?

A. Andrew.

1 Q. You wouldn't happen to be Junior or ---

2 A. No, sir.

3 Q. --- Michael Andrew Keith, III or anything of
4 that sort?

5 A. No, sir.

6 Q. Okay.

7 A. There's about five of us, but no juniors or
8 seniors.

9 Q. Okay.

10 Where were you born and raised?

11 A. Martinsburg.

12 Q. Martinsburg.

13 How long's it been since you lived in Berkeley
14 County?

15 A. Nineteen (19) --- well, I went to college in
16 '87, so back for summer. So probably '91, '92 somewhere.

17 Q. The college, where was that?

18 A. Fairmont State.

19 Q. Fairmont State.

20 A. And Marshall University.

21 Q. Did you graduate any programs at Fairmont?

22 A. Board of Regents. That was a four year.

23 Q. What degree did you obtain at Marshall?

24 A. Police Science.

1 Q. Police science.

2 A. Two-year degree.

3 Q. Okay.

4 Police science --- well, let me back up to the
5 program at Fairmont State. Sounds like that Board of
6 Regents program was a --- a liberal arts education?

7 A. What happened was I --- my major was
8 architectural engineering.

9 Q. Okay.

10 A. And then I went to the academy. Out of the
11 academy, I was stationed over in Romney. So I still had
12 a couple hours to finish for my degree. So I went back,
13 and --- and just finished under the Board of Regents
14 Degree.

15 Q. Okay.

16 A. Because they changed the catalogue. If you're
17 out for two years, you can't go back in under the same
18 major. You have to take different classes.

19 Q. Yeah.

20 Okay.

21 I appreciate that. And I'm sure I'll
22 understand this in its sequence here in just a couple
23 minutes. What year did you attend the police academy?

24 A. 1994. September of '94 to April of 1995.

1 Q. I presume that was at the Institute facility?

2 A. Yes, sir.

3 Q. Okay.

4 My mother graduated there.

5 A. Your mother?

6 Q. My mother. She was a deputy.

7 A. Okay.

8 Q. In Wood County.

9 A. Basic class. Nice.

10 Q. And she graduated their program back in the
11 '70s, so ---.

12 A. Lots changed since then.

13 Q. You were --- you were playing basketball in
14 Junior High probably.

15 A. Probably so. Well, actually no. I was ---.

16 Q. When was ---- you was born in '68?

17 A. Yeah. I would've been 12.

18 Q. Yeah.

19 A. So yeah.

20 Q. Okay then.

21 I'm a little bit familiar with their program.

22 But I'm sure it changed a lot from the time my mother
23 went through to --- until you attended. So I'll ask you
24 a couple questions about that, too.

1 Okay.

2 So you graduated from Martinsburg High School?

3 A. Yes, sir.

4 Q. Okay.

5 And that would've been what year?

6 A. 1987.

7 Q. So you graduated in 1987 from Martinsburg High
8 School. You then went to Fairmont State?

9 A. Correct.

10 Q. Started a program in architectural --- I'm
11 sorry.

12 A. Engineering.

13 Q. Engineering, yeah.

14 A. Uh-huh (yes).

15 Q. I knew it wasn't design. Engineering. Did you
16 ever get a degree in architectural engineering?

17 A. No.

18 Q. You started your program in architectural
19 engineering at Fairmont, and that was in 1987. You
20 graduated, I presume, in '91?

21 A. No. My parents got a divorce. I can't
22 remember what --- what year they got a divorce. I
23 couldn't attend college anymore. I had to go get a job.
24 And then I worked at Elder Beerman up in Morgantown here.

1 I became a manager there, and from there, I went to the
2 state police academy.

3 Q. Okay. All right. Okay.

4 So you had to quit college after --- do you
5 remember how many years of school you had in?

6 A. I think I had three and a half, four years in.

7 Q. You were close.

8 A. I was getting close, yes. Yes, sir.

9 Q. Okay.

10 I guess I have --- my curiosity. Not that it's
11 all that relevant I guess to the case, but I'm just
12 curious. Why didn't you go back and finish up your
13 architectural engineering program? Why'd you switch to
14 police work?

15 A. I also wanted to be a trooper. My parents did
16 not want me to be a trooper. I did the drafting, home
17 design in high school. When they got divorced, I pretty
18 much told them both to hell with you. I'm going to go do
19 what I want to do.

20 Q. Okay.

21 So you were emancipated by the divorce?

22 A. Pretty much.

23 Q. I got you. Well, good for you. Glad you
24 pursued your own passion there.

1 Okay.

2 So when you went to the police academy, you
3 hired in at the state police. And they told you, you
4 know, before you do any, you know, police work for us,
5 you have to go to the academy for six months. Is that
6 pretty much the deal that explained to you?

7 A. Yes, sir. That's how cadets do it, yes. State
8 police do it.

9 Q. That's the way I remember it when my mother
10 went through. The state police guys kind of had a
11 different track that they were on.

12 A. Right. We have a longer course.

13 Q. Yeah. Different from municipal and county
14 people?

15 A. Yes. Yes, sir.

16 Q. I guess it was still that way when you went
17 through.

18 All right.

19 So at the police academy, as a cadet, your
20 courses of study, can you just give me --- just rattle
21 off as many as you can readily bring to memory?

22 A. Accident investigation, criminal investigation.
23 Where --- where the Marshall University comes in, they
24 sent instructors over to the academy to teach us deviant

1 behavior, some math course.

2 Q. Deviant behavior. You mean, like, criminal
3 psychology?

4 A. Pretty much. Yes, sir.

5 Q. Okay.

6 Did you ever learn what a borderline
7 personality diagnosis means?

8 A. I know about it.

9 Q. You --- you do know something about that?

10 A. I've read about it, but I don't know too much
11 about it, sir. Not ---

12 Q. Okay.

13 A. --- clinically.

14 Q. Okay.

15 Well, that's fine. What you have read about
16 borderline personality, was it in connection with this
17 litigation?

18 A. No, sir. No, sir.

19 Q. Was it in connection with Ellen Ruth Costlow by
20 any chance?

21 A. No, sir.

22 Q. Okay.

23 So it was something --- perhaps another case
24 you were walking?

1 A. I was also taught at Pierpont Community
2 College.

3 Q. Oh, okay.

4 So you were doing background research for your
5 teaching?

6 A. Sure.

7 Q. Sorry. Maybe I misunderstood you. I thought I
8 heard you say that you did some teaching at Pierpont?

9 A. Yes, sir.

10 Q. And I took it you to mean that you read about
11 borderline personality in preparation for your teaching
12 work there?

13 A. Oh, no. No, sir.

14 Q. That was my mistake then.

15 A. No, sir.

16 Q. I misunderstood what you were telling.

17 A. No, sir.

18 Q. Okay.

19 Well, at any rate, I --- I interrupted you with
20 some questions. And I appreciate you tolerating that. I
21 asked you before to identify best you could from memory
22 the courses that you took when you were at the academy.

23 So you said criminal investigation, ---

24 A. Accident ---.

1 Q. --- traffic accidents, deviant behavior.

2 A. That was through Marshall. Of course, we did
3 the qualificat --- firearms, driving skills, things like
4 that.

5 Q. Okay.

6 Criminal investigation, that makes a lot of
7 sense. I'm going to guess that there are probably a
8 variety of individual classes that were given in respect
9 to the topic of criminal investigation. I mean, that
10 could really take in some ---

11 A. Some.

12 Q. --- territory.

13 A. Uh-huh (yes).

14 Q. I mean, that's the --- the guts of police work
15 after all, is investigating crimes and --- and you're not
16 always going to show up in the midst of a fracas and ---
17 and restore peace. A lot of times you're --- you're
18 coming along after the fact, and you have to investigate

19 True?

20 A. Yes, sir.

21 Q. Okay.

22 So criminal investigation. Did you have
23 classes that were specific to domestic disturbances?

24 A. Not that I can recall, sir.

1 Q. I've heard it said and I'm sure you have as
2 well ---. Now I have the opportunity to ask somebody
3 who's in the line of duty this question. Is it true that
4 first responders, particularly police officers, regard
5 domestic dispatches as some of the least pleasant and
6 perhaps most dangerous calls that you can be assigned?

7 ATTORNEY JEFFRIES: Objection. Calls for
8 speculation.

9 BY ATTORNEY CROOKS:

10 Q. I'm just asking for your take on that.

11 A. It can --- it can be that way, yes, sir, when
12 emotions are involved ---

13 Q. Okay.

14 A. --- between two people.

15 Q. Does your blood run cold when somebody says we
16 got a domestic dispute?

17 A. No.

18 Q. We need you to ---

19 A. No, sir. Not at all.

20 Q. --- respond to it?

21 A. Not at all. It's dealing with people. However
22 their emotional state is when we get there, it's, you
23 know, up to us to calm them down and take care of the
24 situation.

1 Q. So when you are dispatched on a domestic call,
2 what sort of expectations are you entertaining as you're
3 in route there?

4 A. I have learned not to do that.

5 Q. Okay.

6 A. Everything's different. What you expect is not
7 what you're going to get. Whether it be a small call
8 that escalates to something larger, or a major that
9 escalates or --- or deescalates to something that doesn't
10 have anything to do with it. It's just --- I don't
11 really speculate when I go to a call. I've learned that,
12 just take care of it when you get there.

13 Q. So running through this list of classes you
14 took at the academy, traffic accidents, criminal
15 investigation, deviant behaviors taught by adjuncts from
16 the Marshall University, firearms issues, driving skills.
17 How about investigation techniques as they relate to
18 interview setting, how to interview people?

19 A. We would have troopers come in and talk to us
20 about investigative skills. As far as interview
21 processes, there wasn't a specific class on that. No,
22 sir.

23 Q. You finished at the academy in April 1995?

24 A. Yes, sir.

1 Q. Did you receive any awards or distinctions upon
2 graduation?

3 A. No, sir.

4 Q. Do they hand out awards or distinctions to any
5 of the cadets?

6 A. I think they recognize the top person in the
7 --- in the class. But other than that, no, sir.

8 Q. Did you have your marksman badge or anything of
9 that nature as a product of your training at the academy?

10 A. I had a shooting badge, yes, sir.

11 Q. Did you earn that because of your training at
12 the academy?

13 A. Yes, sir.

14 Q. Anything else in that block?

15 A. Sorry?

16 Q. Anything else of that type?

17 A. Skills?

18 Q. Yeah. I mean, we've mentioned your shooting
19 badge. I mean, is there anything else?

20 A. Right. Everything was pretty much pass or
21 fail.

22 Q. Uh-huh (yes).

23 Okay.

24 So after you graduated the academy in April

1 1995, they posted you somewhere. Where did --- where'd
2 you go?

3 A. Romney. Hampshire County.

4 Q. How long were you there?

5 A. 1995 to 2002.

6 Q. You're a Lieutenant now.

7 A. Yes, sir.

8 Q. What was your rank at the time you posted in
9 Romney?

10 A. Trooper to Senior Trooper.

11 Q. Aside from serving honorably over a period of
12 time, anything else you had to do to achieve promotion
13 from the rank of Trooper to Senior Trooper?

14 A. No, sir.

15 Q. Okay.

16 What was your second posting?

17 A. Came to Morgantown.

18 Q. So that would've been --- what time --- what
19 part of 2002?

20 A. I believe it was around April. I believe. I
21 know it was in the spring.

22 Q. Have you been posted in Morgantown ever since
23 April of 2002?

24 A. No, sir.

1 Q. How many other postings have you had since
2 2002?

3 A. From Morgantown, I was promoted to Sergeant in
4 Moundsville.

5 Q. So you got a promotion to Sergeant and
6 transferred to Marshall County?

7 A. Yes, sir.

8 Q. How long were you in Marshall County?

9 A. Approximately three years.

10 Q. Did you --- strike that.

11 Were you promoted during the time that you were
12 posted in Marshall County? That is to say beyond
13 Sergeant?

14 A. No, sir. I was transferred back to Morgantown
15 as a Sergeant.

16 Q. So that would've been your fourth posting.

17 Am I ---

18 A. Correct.

19 Back to Morgantown.

20 Q. --- hearing ---?

21 A. Yes, sir.

22 Q. So you were reposted to Morgantown in about
23 2005?

24 A. That's about right. Yes, sir.

1 Q. You have any more specific recollection as to
2 time of year?

3 A. No, sir. I do not.

4 Q. Were you promoted from Sergeant to Lieutenant
5 during the time you were serving your fourth post here in
6 Morgantown?

7 A. No, sir. From Morgantown, I went to Wheeling
8 as a First Sergeant.

9 Q. So your fifth posting to Ohio County?

10 A. Yes, sir. That was in September of, I believe,
11 '15. I think so. It was '15. I think it was September,
12 '15.

13 Q. I want to make sure I have this understood
14 accurately. You were a First Sergeant while you were
15 serving in Wheeling?

16 A. Yes, sir. Sergeants are --- Sergeant's
17 Assistant Detachment Commander --- Detachment Commander
18 pertain to the county. First Sergeant is a district.
19 It's usually three counties. Supervise three counties.

20 Q. Okay.

21 A. The Sergeants are underneath them.

22 Q. You anticipated me beautifully. That was what
23 I was going to ask you to do is explain the difference
24 between being a Sergeant and First Sergeant.

1 So your promotion to First Sergeant was
2 coincident with your transfer to Wheeling?

3 A. Yes, sir.

4 Q. Am I understanding that right?

5 A. Yeah, yeah. Yes, sir. Yes.

6 Q. Now, when you were supervising three counties,
7 what --- what did that entail?

8 A. It basically entailed supervising the three
9 Sergeants that I had, one in each county, and making sure
10 those Detachments ran correctly.

11 Q. What county Sergeants were you supervising?

12 A. Ohio County, Brook County and Hancock County.

13 Q. How long were you in the Wheeling post?

14 A. Approximately three years and some change. I
15 was promoted to Lieutenant in February of this year.

16 Q. Of 2019?

17 A. Yes, sir.

18 Q. Could ---?

19 A. Yes. Uh-huh (yes). Yep. Yes, sir. Two years
20 and some --- three years and some change. Three years,
21 six months. Something like that.

22 Q. So February, 2019 promoted to ---

23 A. First Lieutenant.

24 Q. --- First Lieutenant?

1 A. Yes, sir.

2 Q. How many grades of Lieutenant are there?

3 A. Two on the books. We just use one.

4 Q. Okay.

5 A. There is a Second Lieutenant promotion on the
6 books, but we don't use it.

7 Q. Okay.

8 So you were promoted to First Lieutenant in
9 February 2019 and transferred coincidentally to
10 Morgantown?

11 A. Elkins.

12 Q. I'm sorry. To Elkins.

13 So it sounds like the --- the longest period
14 that you were in any one posting was Morgantown between
15 2005 and 2015?

16 A. Yes, sir.

17 Q. During that time, you were a Sergeant?

18 A. Yes, sir.

19 Q. As Sergeant, you were answerable to a First
20 Sergeant?

21 A. I was --- I was an Assistant Detachment
22 Commander and Detachment Commander during that time. As
23 I was an Assistant Detachment Commander, I would answer
24 to the Detachment Commander and the First Sergeant.

1 Q. Okay.

2 Who was your Detachment Commander? I'm going
3 to --- I'm going to do it this way. Ten years' time
4 span. You guys get shifted around.

5 A. Right.

6 Q. So I'm going to guess that you had different
7 Detachment Commanders ---

8 A. Yes, sir.

9 Q. --- during that ten period of years.

10 A. Yes. Uh-huh (yes).

11 Q. All right.

12 Let me focus my question then during the time
13 period that I think most pertinent to why we're together
14 here.

15 A. Sure.

16 Q. Let's look at, say, 2012, 2013, '14, '15.

17 A. Correct.

18 Okay.

19 Q. Until you're transferred.

20 A. Yes, sir.

21 Q. So let's say 2012 through '15, how many
22 different Detachment Commanders did you have during that
23 time?

24 A. In 2015, right before I went to Wheeling, I was

1 the Detachment Commander. I had that for --- it was over
2 a year. I can't remember how --- how long that was.
3 Before that, if I'm working backwards?

4 Q. Sure.

5 A. Lieutenant Kennedy was the Detachment Commander
6 right before me.

7 Hold on.

8 Q. Okay.

9 How long ---

10 A. Hold on a second.

11 Q. --- was Lieutenant Kennedy your Detachment
12 Commander?

13 A. Hold on one second.

14 Q. Sure.

15 A. Yeah. That's correct. Yes, sir.

16 I --- I can't say that, sir. I don't know.
17 It's ---.

18 Q. Too long ago?

19 A. It was --- yeah. Too --- yeah. People come
20 and go as you said. Yes, sir.

21 Q. That's policy, isn't it? To some degree you
22 guys are moved around, you know, by design?

23 A. No, sir. Not now. No. The reason I was
24 stagnant in --- in Morgan --- in Morgantown for that long

1 is because my kids were here.

2 Q. Okay.

3 A. Didn't want to go anywhere. Didn't test. I
4 didn't do anything because my kids were here.

5 Q. All right.

6 A. And they were growing up. So I was happy, you
7 know, just staying put without promotions.

8 Q. Okay.

9 I think I follow that. Let me return to my
10 question, though. As a matter of policy, is it
11 desirable, from the perspective of the state police, that
12 --- that their troopers serve different parts of the
13 state over the course of their stay?

14 A. No, sir. No, sir.

15 Q. All right.

16 A. It's changed.

17 Q. State police would be satisfied to have you
18 stay in one spot?

19 A. If that's what you would like, yes. If you
20 didn't test for promotion --- there's a guy here in
21 Morgantown that's been here 20-some years.

22 Q. Okay.

23 A. But he's never really wanted to go anywhere
24 else.

1 Q. I see.

2 Okay.

3 Now, has it always been the policy to leave it
4 up to the individual troopers as to whether they stay or
5 not?

6 A. Since I've been. I --- I understand before
7 they would transfer them, but since I've been in, it's
8 pretty much been that way. Yes, sir.

9 Q. All right.

10 Maybe that's where I got off the track. It
11 used to be the policy, and then it ceased to be?

12 A. Right. Right. It's common to get promoted
13 with --- I mean, I'm sorry --- transferred with a
14 promotion. If that spot's open.

15 Q. Okay.

16 So February, 2019 you were promoted to First
17 Lieutenant, transferred to Elkins Town. How long were
18 you in Elkins?

19 A. My current duty station's in Elkins.

20 Q. So you're still working there?

21 A. Yes, sir.

22 Q. As a First Lieutenant posted to Elkins, do you
23 supervise --- do you supervise troopers in multiple
24 counties?

1 A. No, sir.

2 Q. Okay.

3 Describe for me what the nature of your
4 position is as First Lieutenant.

5 A. I'm part of the Professional Standards Unit.

6 Q. Professional Standards Unit?

7 A. Yes, sir.

8 Q. On TV, they would call that office of internal
9 affairs.

10 Right?

11 A. Pretty much. Yes, sir.

12 Q. Okay.

13 So if police officers, or troopers --- pardon
14 me --- are accused of misconduct, ---

15 A. Yes, sir.

16 Q. --- you would be involved in investigating that
17 misconduct?

18 A. Yes. There's other Lieutenants also that
19 they're under PSU. It would be one of us that would go
20 in and investigate that.

21 Q. How many Lieutenants are in PSU?

22 A. There's at least one per troop. We have six
23 --- we'll have eight troops. But we'll have First
24 Lieutenants in charge of PSU in six of those troops. I'm

1 sorry. Turnpike, seven.

2 Q. So there are seven troops?

3 A. There's eight troops.

4 Q. Okay.

5 A. Counting BCI.

6 Q. Okay.

7 A. BCI would not have their --- would not have
8 PSU.

9 Q. BCI?

10 A. Bureau of Criminal Investigations.

11 Q. So have you ever worked in Bureau of Criminal
12 Investigations?

13 A. No, sir.

14 Q. No experience in that one?

15 A. No, sir.

16 Q. Okay.

17 So you started doing professional standards
18 unit work in February of this year, 2019?

19 A. Yes, sir.

20 Q. Do you like it?

21 A. That's a broad question.

22 Q. I suppose so.

23 A. I don't like the area. I do not like --- it's
24 a beautiful area.

1 Q. Elkins is beautiful.

2 A. Yes, it is. And I spend a lot of time out in
3 the field.

4 Q. Very rural.

5 A. Yes. Very beautiful though. It's --- I
6 inspect Detachments, and you know, I just don't know a
7 lot of the guys over there because I've never been over
8 there before.

9 Q. Okay.

10 All right.

11 So the nature of the work that you do in the
12 Professional Standards Unit, it includes investigating
13 wrongdoing allegations on the part of troopers. What
14 else does it take in? Is that all you do?

15 A. No, sir. No, sir. We --- we have to inspect
16 Detachments, inspect facilities, inspect troopers.

17 Q. When you say you inspect troopers, what do you
18 mean by that?

19 A. If we go and do an Detachment inspection, part
20 of that inspection is to make sure that their weapons are
21 --- are in good shape. Their laptops, any personnel
22 equipment they've been issued, it's inspected.

23 Q. Do you go through personnel files and judge
24 whether the trooper is up to date on all of their

1 training and certifications?

2 A. No, sir. That's up to the academy.

3 Q. The academy does that.

4 A. Uh-huh (yes).

5 Q. On an ongoing basis?

6 A. We go once a year to in service, we call it.

7 Q. Okay.

8 A. And in that in service, we get enough hours to
9 recertify us from year to year.

10 Q. Okay.

11 I think I understand you.

12 How long is the in service that's done on an
13 annual basis?

14 A. It's usually Tuesday morning through Thursday
15 evening.

16 Q. Is it same time every year?

17 A. They start in February of each year, and it
18 goes to the end of May. It depends on which week you go.
19 They schedule you during that time period.

20 Q. I think I understand you.

21 So tell me about that in service training.
22 What does it entail?

23 A. We have different classes depending on what the
24 academy is teaching that year. We have defensive tactics

1 updates, we requalify with our weapons, we have a
2 physical and see the department doctor.

3 Q. State police are usually pretty fit specimens
4 by my observation.

5 A. Yes. We try. But at least we get a physical
6 year.

7 Q. Okay.

8 Well, I mean, if --- if you got severely obese,
9 that would be a problem for you, wouldn't it?

10 A. Yes, sir.

11 Q. You might not even pass your physical
12 standards?

13 A. The physical standards is only for promotions.

14 Q. Oh, is it?

15 A. Yes, sir.

16 Q. Okay.

17 A. There's --- yes.

18 Q. Okay.

19 I just presumed that they expected you guys to
20 stay fit and trim.

21 A. I think there's case law out there preventing
22 that for some reason. Not that I get into all that.

23 Q. I think you might be right about that.

24 A. Yes, sir.

1 Q. I'm a little surprised, but okay.

2 So how many investigations of trooper
3 misconduct have you been involved in so far?

4 A. One.

5 Q. One. That wouldn't happen to concern either of
6 the other two trooper Defendants in this litigation,
7 would it?

8 A. No, sir. No, sir.

9 Q. Okay.

10 A. No, sir. And let me qualify that's not the
11 only job I have in the state police.

12 Q. Yeah. I --- I presume that you had other
13 duties?

14 A. Yes, sir.

15 Q. Right.

16 A. Yes, sir.

17 Q. How many state troopers are there right now?

18 A. There's over 600. I don't know the number.

19 Q. Yeah, I'm not holding you to a precise number.

20 A. It changes ---

21 Q. I'm just trying to get a reliable ---.

22 A. --- from day to day.

23 Yes, sir.

24 Q. I'm just trying to get a reliable ballpark

1 figure.

2 A. It changes from day to day.

3 Q. Over 600?

4 A. Yes, sir.

5 Q. So there are over 800 troopers spread among
6 eight troops?

7 A. Six hundred (600).

8 Q. What'd I say?

9 A. Eight hundred (800).

10 Q. Oh, I'm sorry.

11 There are over 600 troopers spread among eight
12 troops?

13 A. And headquarters.

14 Q. And headquarters. The one case of alleged
15 misconduct that you have investigated, is it concluded?

16 A. Yes, sir.

17 Q. How long did it take to conduct that?

18 A. About a week.

19 Q. So you --- based on what you've been told, and
20 how you've been trained in conducting these inquiries, is
21 that fairly standard turnaround time?

22 A. It depends on the investigation.

23 Q. Depends on what the nature of the allegation
24 is?

1 A. This is a very straightforward allegation.

2 Q. Do you know if any professional standards unit
3 inquiries have been conducts either in regard to your
4 performance or the performance of Chris Berry or Ronnie
5 Gaskins in connection with this matter?

6 A. No, sir. I do not know that.

7 Q. When I say this matter, I mean the issues that
8 are joined in the pleadings of this civil action.

9 A. No, sir. I know there is a complaint filed,
10 but I do not believe the professional standards unit
11 conducted an investigation.

12 Q. Okay.

13 Why not?

14 A. The letter I received from --- they have to
15 notify us. And plus, they notify us when the --- when
16 the investigation is over with. I believe the letter
17 that I got pertained to, I believe --- and this is from
18 my recollection. If --- when the court case was over, if
19 an investigation is still warranted or wanted, they would
20 do an investigation after the court case was --- was
21 done.

22 Q. When did you receive that letter?

23 A. Oh, my gosh. That's --- I would say a couple
24 years ago. But it could've been much longer than that. I

1 don't remember.

2 Q. Do you know who filed the complaint?

3 A. That was Mr. Ballock, Senior.

4 Q. That would be Tom ---

5 A. Yes, sir.

6 Q. --- Ballock?

7 A. Uh-huh (yes).

8 Q. Do you have any memory as to when Mr. Tom
9 Ballock, Senior filed his complaint ---

10 A. No, sir.

11 Q. --- with the Professional Standards Unit?

12 A. No, sir.

13 Q. Were you shown a copy of his complaint?

14 A. I --- I believe the letter I received was the
15 response that was given to him. The letter that was
16 written to him was also ---.

17 Q. Copied to you?

18 A. Yes, sir.

19 Q. Okay.

20 Was the complaint proceeding just you
21 individually, or against you, Trooper Gaskins and Trooper
22 Berry altogether?

23 A. I believe it was individually.

24 Q. Okay.

1 How about the other two troopers? Were ---?

2 A. I don't know anything about that, sir.

3 Q. You don't know?

4 A. No, sir.

5 Q. I guess another biographical topic I wanted to
6 cover has to do with your family situation. You
7 mentioned you --- you raised some kids already?

8 A. Yes, sir.

9 Q. Are you currently married?

10 A. No, sir.

11 Q. No?

12 A. No, sir.

13 Q. Okay.

14 Are you divorced, or did your wife pass away?

15 A. Divorced.

16 Q. How long has that been?

17 A. I believe that was 2005.

18 Q. No remarriages?

19 A. No, sir.

20 Q. Were you just married the one time?

21 A. Yes, sir.

22 Q. How many kids do you have?

23 A. Two.

24 Q. I'm not going to depose them, but I would ask

1 you a couple questions ---

2 A. Sure.

3 Q. --- in that direction. First of all, boy,
4 girl?

5 A. Both. One each.

6 Q. Okay.

7 Which one's older?

8 A. My daughter.

9 Q. How old is she?

10 A. She will be --- let me see. 1995. She'll be
11 24 this year.

12 Q. She was born in 1995?

13 A. Yes, sir.

14 Q. Same year as my son.

15 And so your son, what year was he born?

16 A. 1998. He'll be 21 this year.

17 Q. Is he going to the academy?

18 A. He wants to be a police officer, but he wants
19 to finish college first.

20 Q. Okay.

21 How about your daughter? She in school?

22 A. She --- she went through a beautician school.

23 Q. Okay.

24 A. Yes.

1 Q. How about the training you got at the academy -
2 -- specifically I want to ask about what, at least in my
3 line of work, lawyers would refer to as professional
4 conduct, perhaps ethics.

5 A. Yes, sir.

6 Q. Did you receive any training in that?

7 A. I believe we had a class in ethics.

8 Q. Tell me what kind of material was discussed in
9 that.

10 A. I really don't remember, sir.

11 Q. Is there a Code of Ethics for state police
12 officers?

13 A. Sorry?

14 Q. Do you have a Code of Ethics that you adhere to
15 in the state police?

16 A. You mean spelled out Code of Ethics? What we
17 can do and what we can't do?

18 Q. Sure.

19 A. Sure thing.

20 Q. Lawyers do it, so I'm --- I'm asking whether
21 state police do it, too.

22 A. No, sir.

23 Q. Lawyers have a set rules we have to go by.

24 A. Nothing spelled out. We do have some core

1 values. But as far as ethical, I mean, we've been told
2 what we can do and what we can't do. But as far as it
3 being spelled out, I don't know where --- where I can
4 find that.

5 Q. So there's no Code of Ethics, there's no set of
6 rules of professional or --- or proper conduct? Whether
7 the word --- I don't want to overstate the question by
8 using the word professional. There are no rules of
9 conduct for state police officers?

10 A. Of course, we have --- I don't understand your
11 --- are you trying to pin me down to a specific ---
12 something in writing that we have or ---?

13 Q. Sure. I mean, you work in the professional
14 standards unit.

15 A. Yes, sir.

16 Q. How do you judge the propriety of conduct on
17 the part of troopers if there is no Code of Ethics or
18 codified set of rules for conduct?

19 A. State code, of course. What we can't do. We
20 can't break a law or do anything against state code. As
21 far as ethical violations, that would be referred to an
22 investigation and a determination if the officer's
23 conduct was becoming or not becoming.

24 Q. Would the professional standards unit make that

1 investigation?

2 A. Yes, sir.

3 Q. If a state police officer, trooper, had a
4 romantic relationship --- and by that, I mean a
5 relationship that included sexual relations --- with a
6 member of the public, would it be considered unethical
7 for that trooper to investigate a complaint filed by that
8 person?

9 A. I don't understand your question.

10 Q. Sure.

11 A. Is it unethical for a trooper to have a sexual
12 relation with another person or ---?

13 Q. I presume it's not unethical for troopers to
14 have sexual relationships. My question has to do with
15 the propriety of a state trooper having a sexual
16 relationship with a member of the public, and then acting
17 in an official capacity to investigate a complaint made
18 by the person with whom they have a sexual relationship.
19 Would that be considered appropriate conduct on the part
20 of the state trooper?

21 A. I --- I guess it would be --- it would be
22 determined by what that investigation was. There's all
23 different forms of investigations. I don't know. It's
24 kind of a broad question.

1 Q. Do you know if Christopher Berry, Trooper
2 Christopher Berry, ever had a sexual relationship with
3 Ellen Ruth Costlow?

4 A. I do not know that. No, sir.

5 Q. If Christopher Berry had a personal
6 relationship with Ellen Ruth Costlow, and she wanted to
7 file a complaint against her estranged husband at the
8 time, my client, ---

9 A. Right.

10 Q. --- Scott Ballock, ---

11 A. Yes, sir.

12 Q. --- would it have been appropriate for Chris
13 Berry to participate in any way in the investigation of
14 that complaint?

15 A. If a trooper was having a sexual relationship
16 with a person, and for him to be personally involved with
17 making a complaint against her ex-husband or --- or a
18 family member would be improper.

19 Q. Why?

20 A. He wouldn't be a non-biased person.

21 Q. Why would that be a problem?

22 A. Because he would have emotional connection with
23 the person he's making a complaint about.

24 Q. That would explain his impartiality, wouldn't

1 it?

2 A. Impartiality to ---?

3 Q. His lack of impartiality when he received that.
4 If a trooper is having a sexual relationship with a
5 member of the public, that by itself is not a problem?

6 A. No, sir. Unless it's on duty.

7 Q. Unless it's during ---

8 A. Right.

9 Q. --- work hours.

10 Okay.

11 I understand that. I don't know if my
12 information is that precise.

13 The point that I'm touching on currently here
14 has to do with if a trooper --- in this case we're
15 talking about Christopher Berry ---

16 A. Yes, sir.

17 Q. --- having a sexual relationship with a member
18 of the public. And we're talking about Ellen Ruth
19 Costlow?

20 A. Yes, sir.

21 Q. And she wanted to make a criminal complaint
22 against her then estranged husband, Scott Ballock, ---

23 A. Yes, sir.

24 Q. --- my client, ---

1 A. Yes, sir.

2 Q. --- it would be inappropriate for Christopher
3 Berry to either participate directly or to try and
4 influence his colleagues at the state police in the
5 investigation of the complaint that Ellen Ruth Costlow
6 might have made against my client?

7 A. Yes, sir.

8 Q. One of the reasons ---.

9 A. I'm not avoiding your question. I'm just
10 trying to make sure we --- we're clear.

11 Q. I appreciate that.

12 A. Okay.

13 Q. I appreciate your careful attention to my
14 questions because these are lawyerly questions. There's
15 a lot of stuff in it, and I can tell you're paying close
16 attention.

17 A. Okay.

18 Q. I appreciate it.

19 Thank you.

20 I'll try to be clearer with you. I don't --- I
21 don't have any problem with your asking for
22 clarification. I want to make sure we understand one
23 another.

24 A. Yes, sir.

1 Q. If Christopher Berry was having a romantic
2 relationship with Ellen Costlow, and he participated or
3 tried to influence a state police investigation into a
4 complaint initiated by Ellen Costlow against my client,
5 Scott Ballock, during the course of their divorce, that
6 would be inappropriate because under such circumstances,
7 Chris Berry would lack impartiality?

8 A. Correct.

9 Q. Okay.

10 Help me understand what the policy position of
11 the state police was during the period that you were
12 working in the Morgantown Detachment from 2012 through
13 2015 with specific regard to the handling of complaints
14 in the context of domestic disputes that were pending in
15 family court.

16 All right?

17 A. Okay.

18 Q. There's a lot in that question.

19 A. There is.

20 Q. But I --- my sense is that you followed it.

21 A. Yes, sir.

22 Q. Okay.

23 There's a term that you here used sometimes
24 called lawfare.

1 A. Never heard of it.

2 COURT REPORTER: Sorry I didn't---.

3 ATTORNEY CROOKS: Lawfare. Lawfare.

4 L-A-W-F-A-R-E.

5 COURT REPORTER: Okay.

6 Thank you.

7 BY ATTORNEY CROOKS:

8 Q. Yeah. It's kind of --- it'd kind of a
9 modification of the word warfare.

10 A. Okay.

11 Q. And instead of, you know, overt violence, it's
12 the use of the court system to try and disadvantage or
13 hurt another person.

14 A. Okay.

15 Q. Say making a criminal complaint, not so much
16 because the subject of the complaint was guilty of
17 anything criminal, but to try and gain an advantage or to
18 hurt that person.

19 A. Okay.

20 Q. Okay.

21 People who are going through divorces sometimes
22 are motivated by a lot of hurt and anger.

23 A. Sure.

24 Q. If the opportunity comes along in the course of

1 divorce litigation, they'll inflict emotional pain on the
2 person from whom they're getting divorced.

3 A. Yes, sir.

4 Q. You're familiar with that. I know you got
5 divorced.

6 A. Yes, sir.

7 Q. So --- and I don't --- I don't necessarily want
8 to put your divorce upon on the examining table here.
9 But at least, you know, I know because you've been
10 through the process of divorce that it's a kind of a sad
11 thing at the very least.

12 A. Sadder and unpleasant.

13 Q. Sad and unpleasant.

14 A. Yes, sir.

15 Q. Yeah. You're ending a relationship ---

16 A. Yes, sir.

17 Q. --- with somebody that, you know, you married
18 at one point. And --- and in your case, and my case, I'm
19 divorced also, children were involved.

20 A. Yes, sir.

21 Q. So --- well, in the case of Scott and Ellen,
22 there were two children involved. Are you aware of that?

23 A. Yes, sir.

24 Q. And a boy, Tommy, and a daughter, Summer. Were

1 --- did you know the names of those kids?

2 A. I probably read them someplace, sir.

3 Q. Okay.

4 During the period of time when you were working
5 in the Morgantown Detachment, 2012 through 2015, there
6 were times when Ellen Ruth Costlow contacted members of
7 the detachment to initiate criminal complaints my client.
8 Are you aware of that?

9 A. About what, sir? What --- what's --- is there
10 a specific?

11 Q. It does get rather specific, but I'm just
12 asking generally at the moment. Are you aware that Ellen
13 Ruth Costlow initiated at least one criminal complaint
14 against my client, Scott Ballock, during the time that
15 you were working in Morgantown Detachment?

16 A. Did she initiate and seek that out?

17 Q. Yes.

18 A. No.

19 Q. All right.

20 So I'm acting on the point of clarification
21 that you just ---

22 A. Sure.

23 Q. --- offered back to me. What is it about that
24 point of clarity that prompted you to say you weren't

1 aware of that?

2 A. I --- I'm sorry. I'm misconstruing your
3 question. She did not initiate ---.

4 Q. I may have confused you without intending to.
5 You worked in the Morgantown Detachment ---

6 A. Yes, sir.

7 Q. --- of the state police between 2012 and 2015?

8 A. Yes, sir.

9 Q. You were a sergeant?

10 A. Yes, sir.

11 Q. And my question has to do with some of the
12 merits that we're litigating in this civil action.

13 A. Sure. Yes, sir.

14 Q. Okay.

15 I'm asking you do you remember, generally, that
16 Ellen Ruth Costlow initiated at least one criminal
17 complaint against my client, Scott Ballock, during that
18 time.

19 A. That was not her intent when she came into the
20 state police detachment.

21 Q. Okay.

22 What was her intent, as far as you were able to
23 discern?

24 A. A complaint against Trooper Berry.

1 Q. Against Trooper Berry?

2 A. Yes, sir.

3 Q. All right.

4 Tell me about that. When was it, first of all?

5 A. It was my first contact with Tom Ballock,
6 Senior. He had called in to the state police barracks to
7 let us know, or let me know --- he asked for a supervisor
8 --- to let me know that Chris Berry was having an affair
9 with his daughter-in-law or soon to be daughter-in-law.

10 That conversation was short. There was a
11 couple of questions that I had that he answered.

12 Q. What were those?

13 A. I asked him what his relationship was to Ms.
14 Costlow. He said he was the father-in-law. I asked him
15 why he was making the complaint instead of her husband.
16 I don't remember how he responded to that, if he did. I
17 asked him if he wanted to make a formal complaint, and he
18 declined to do so.

19 Q. So you offered to facilitate the filing of a
20 formal complaint?

21 A. Yes.

22 Q. And your recollection is that Tom, Senior ---?

23 A. He said he didn't want to do that.

24 Q. Did he explain why?

1 A. No, sir, he did not.

2 Q. Is that the end of your contact with Tom,
3 Senior?

4 A. Yes, sir. I believe so.

5 Q. When was that?

6 A. That was --- I do not know that, sir, not
7 without looking at --- it was the first time that I knew
8 of Mr. Ballock and knew of the situation.

9 Q. Okay.

10 So Ellen Ruth Costlow ---

11 A. Yes, sir.

12 Q. --- comes in the picture next.

13 A. Trooper Berry did first, yes.

14 Q. All right.

15 Trooper Berry. Go ahead. Tell me what you
16 remember.

17 A. I called Trooper Berry, and told him about the
18 allegation. He denied it. I asked him to come in and
19 speak to me. He did. He --- he came in. He did --- I
20 looked at his cell phone. He let me see his cell phone,
21 and there wasn't anything on there that --- that gave me
22 concern or no --- no proving or disproving of a --- of a
23 relationship.

24 Q. Were there any communications on Trooper

1 Berry's cell phone ---?

2 A. I don't remember that. I'm sorry. Go ahead.

3 Q. You're cooperating with me, and I appreciate
4 it, but we're --- we're kind of getting comfortable with
5 each other so you're kind of anticipating my question and
6 overrunning it a little bit. That's not disrespectful.
7 It's just how it works with humans. So let me, without
8 being rude to you, suggest that you need to let me finish
9 the question.

10 A. Absolutely.

11 Q. Okay.

12 That way the transcript will --- will read a
13 lot better.

14 A. Got you.

15 Q. You examined Christopher Berry's cell phone as
16 part of your inquiry into, this informal complaint we'll
17 call it, ---

18 A. Right.

19 Q. --- that Tom Ballock, Senior had phoned in to
20 you?

21 A. Correct.

22 Q. All right.

23 In those days, there in Morgantown Detachment,
24 were troopers using an official West Virginia State

1 Police phone, and then maintaining a --- a separate
2 personal phone?

3 A. No, sir.

4 Q. Okay. All right.

5 So if a state police trooper like Christopher
6 Berry had to conduct state police business on the
7 telephone as opposed to over the radio, he would just use
8 his own personal phone?

9 A. Yes, sir.

10 Q. Okay.

11 Likewise, if Trooper Berry wanted to use his
12 cell phone for his own personal, private own business,
13 it'd be that same phone?

14 A. True. Yes, sir.

15 Q. Okay.

16 So you weren't --- you weren't trying to, you
17 know, examine some official phone versus ---

18 A. No, sir.

19 Q. --- his personal phone?

20 A. No, sir.

21 Q. All right.

22 That's all. That's the only point I'm trying
23 to make clear here. Sources of evidence, you know.

24 So you looked at his phone. Did you find that

1 Christopher Berry had communicated directly with Ellen
2 Ruth Costlow using his cell phone?

3 A. I don't remember that, sir. I do not remember
4 if there was any communications between him and her on
5 there. I remember that there wasn't anything --- there
6 wasn't anything proving an allegation on his cell phone.
7 I don't remember specific conversation between him and
8 her on the cell phone. It's been so many years. I --- I
9 don't remember that point.

10 Q. When you say you examined his phone, what did
11 you look at, specifically as you can tell me?

12 A. Text messages.

13 Q. So you looked at text messages?

14 A. Yes.

15 Q. Did you look at the call history?

16 A. Yes, sir.

17 Q. All right.

18 Anything else?

19 A. No, sir. No, sir.

20 Q. These cell phones, you can do all kinds of
21 things?

22 A. Yes. Yes. Yes.

23 Q. I use mine for email.

24 A. Yes.

1 Q. Did you look at Christopher Berry's email
2 account?

3 A. No, sir. I did not.

4 Q. Okay.

5 A. He was letting me look at his cell phone, his
6 personal cell phone so ---.

7 Q. Well, you had legitimate reason to do so.
8 Right?

9 A. Right.

10 Q. All right.

11 You were the sergeant for the detachment?

12 A. One of the sergeants, yes, sir.

13 Q. Okay.

14 I take it was within your scope of
15 responsibilities as a sergeant in the detachment to make
16 the inquiry of Christopher Berry that you made?

17 A. Yes, sir.

18 Q. Okay.

19 Did you consider this to be an investigation
20 that would be reported to the ---?

21 A. Professional Standards Unit?

22 Q. Professional Standards Unit, yeah.

23 A. Depending on what I found.

24 Q. Explain that answer to me with a little more

1 detail.

2 A. If he was conducting a relationship or --- or
3 activities on duty that --- that weren't --- if he was
4 doing something extracurricular on duty, then that would
5 be a problem.

6 Q. Okay.

7 Was Chris Berry married at that time?

8 A. I do not know his married status.

9 Q. Okay.

10 I think we've already established that there's
11 nothing, per se, inappropriate about state police
12 officers, troopers, having personal relationships with
13 civilians?

14 A. Correct.

15 Q. That in and of itself is perfectly fine?

16 A. Yes, sir.

17 Q. Likewise, if Chris Berry was having a
18 relationship with Ellen Ruth Costlow at that time,
19 whenever it was that Tom Ballock called and
20 complained, ---

21 A. Yes, sir.

22 Q. --- that was not necessarily a problem to your
23 way of thinking unless it was taking up company time?

24 A. Correct.

1 Q. After looking Trooper Berry's cell phone, you
2 were satisfied that there was --- there was nothing that
3 you could see in the text app or the call history to
4 suggest that he was, in fact, having a relationship with
5 Ellen Ruth Costlow. Is that ---

6 A. Correct.

7 Q. --- to the best of your memory?

8 A. Yes, sir.

9 Q. But you're not able to recall whether there
10 might've been evidence of direct communication between
11 Chris Berry and Ellen Ruth Costlow on his cell phone?

12 A. Correct.

13 Q. There may be very --- there may very well have
14 been communication between Chris Berry and Ellen Ruth
15 Costlow on Chris Berry's cell phone?

16 A. Yes, sir. That point, I cannot remember.

17 Q. Okay.

18 ATTORNEY JEFFRIES: Are we at a breaking
19 point, Charles? Break wanted.

20 What time is it?

21 COURT REPORTER: 2:10, and we can go off
22 the record.

23 ---

24 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

ATTORNEY CROOKS: We can go back on the record.

BY ATTORNEY CROOKS:

Q. Okay.

Just before we took our short break, we were talking about a timeframe that we'll probably be able to pin down more precisely by reference to the voluminous document productions that have been made.

But doing the best we can from memory, it sounds like you --- you heard from Tom Ballock, Senior by his way of calling --- asking for the person in charge at the barracks. Got you. He complained about Chris Berry.

And then you got in touch with Trooper Berry, talked to him. He denied the relationship with Ellen Ruth Costlow. You looked at his cell phone. Can't remember exactly what you found, but you're confident that you certainly didn't find anything that prompted you to act further on that particular inquiry.

Have I summed all that up correctly?

A. Correct. Yes, sir.

Q. Okay.

Did you do anything else at that point to investigate Tom Ballock, Senior's complaint about Trooper

1 Berry?

2 A. Yes, sir.

3 Q. What did you do?

4 A. Called Ms. Costlow.

5 Q. All right.

6 How'd you --- how'd you know how to get in
7 touch with her? Did Tom Ballock give you that
8 information, or ---?

9 A. I don't remember how I found that out. No,
10 sir, I don't remember that.

11 Q. Didn't get it off Trooper Berry's phone, did
12 you?

13 A. I doubt that, sir. I don't remember how I got
14 her --- her phone information.

15 Q. Okay.

16 Well, you can't say for sure that there wasn't
17 communication between Trooper Berry and Ellen Costlow, so
18 it's possible you did get it from his phone?

19 A. Again, I don't know, sir.

20 Q. All right.

21 So tell me about this. Did you go to see her?
22 Did she come to see you? Did you just talk over the
23 phone? How did this go down?

24 A. I --- I called her on the phone, had a

1 conversation with her on the phone.

2 Q. Okay.

3 Walk me through what you remember about that.

4 A. I told her why I was calling. She --- she got
5 upset and denied any affair with Trooper Berry. And she
6 made the comment --- a comment about --- and I don't know
7 exactly word for word, but she made the comment she was
8 being harassed.

9 Q. By whom?

10 A. I don't believe she even said that, sir. I
11 don't remember the whole gist of the conversation. Being
12 wronged, though.

13 She asked if she could come into the state
14 police barracks to talk to me. I said, well, sure if you
15 have a complaint you would like to make or --- or talk to
16 me, that's fine. So she came in.

17 Q. Have you told me everything you can recall
18 about your first telephone discussion with her?

19 A. No, sir. That's about the --- the vague ---
20 the vague memory I have of it.

21 Q. Did you make notes of your conversation with
22 Tom Ballock, Senior, your discussion with Trooper Berry,
23 and your phone call with Ellen Ruth Costlow?

24 A. I believe I jotted a few things down talking to

1 Mr. Ballock. I don't remember if I jotted anything down
2 talking to Trooper Berry or Ms. Costlow. I don't
3 remember that.

4 Q. Okay.

5 I don't know enough about internal policy and
6 procedure at the state police at the time this happened
7 to have an anticipation, but --- so I'll just ask you.
8 Did you open any kind of a file? Did you keep anything
9 on these inquiries that you were making by way of, say, a
10 computer file?

11 A. No, sir.

12 Q. Okay.

13 Would it be fair to say that prior to Ellen
14 Ruth Costlow coming in to see you, to that point, you did
15 not see enough information to warrant getting in touch
16 with the PSU about Mr. Ballock's complaint?

17 A. Correct.

18 Q. After all, Tom Ballock was offered the
19 opportunity to file a formal complaint. You offered to
20 facilitate it.

21 A. Yes, sir.

22 Q. True?

23 A. Yes, sir.

24 Q. Okay.

1 I take it then the next thing that happened in
2 the story is Ellen Ruth Costlow came in to see you?

3 A. Correct.

4 Q. Okay.

5 When was it? Was it straight away, was it the
6 same day?

7 A. I almost believe it was that night. Yes, sir.

8 Q. Same day?

9 A. I believe so. I believe so. Yes. I believe
10 it was that night. I can't 100 percent say that, but I
11 believe it was that night.

12 Q. I'm going to suggest that this probably was all
13 taking place during the calendar year 2013. Am I helping
14 you there? Anything about the work you've done on this
15 matter, maybe documents you reviewed in preparation?

16 A. Not 100-percent sure, sir. Don't --- I don't
17 remember ---

18 Q. Okay.

19 A. --- without looking at the ---.

20 Q. Let me ask you that question since it's come up
21 in my thinking. What have you done in order to get ready
22 in this deposition today? You reviewed anything?

23 A. I met with Mr. Jeffries and reviewed some
24 emails.

1 Q. Okay.

2 So you did look at some documentation?

3 A. Yes, sir.

4 Q. Okay.

5 The emails that you reviewed, ---

6 A. Uh-huh (yes).

7 Q. --- were they part of the production that I
8 have here in front of me dated March 21, 2018, it looks
9 like?

10 ATTORNEY CROOKS: Maybe you go the page
11 count memorized, Mark. Do you?

12 BY ATTORNEY CROOKS:

13 Q. It looks to me like it's --- well, I've got 882
14 pages of documents that Mark produced to me on March 21,
15 2018. And I will represent to you I've been through this
16 recently, and there's a lot of emails in here.

17 A. Yes, sir.

18 Q. Would --- would those be some of the same
19 emails that you reviewed?

20 A. Yes, sir.

21 Q. Do you remember looking through a stack like
22 this?

23 A. I --- we referenced certain emails, sir.

24 Q. All right.

1 Mark is right there. He probably had something
2 flagged that he wanted to talk to you about.

3 Right?

4 Now, I --- I really don't want to take the time
5 to go page by page down through 880-some pages of
6 documents that have been produced. And I'm sure you
7 appreciate that.

8 A. Yes, sir.

9 Q. You wouldn't want to spend the time with me to
10 do that, either. I've done it before. So that's why I'm
11 doing so much of this in reliance on the review that
12 you've made, and your recollection of this events.

13 Right?

14 A. Yes, sir.

15 Q. However, we do have these documents here.

16 A. Yes, sir.

17 Q. And if you want to --- if you want to brace
18 your memory by having --- taking a moment or two to kind
19 of look down through this, I'm happy to do that for you.

20 A. Okay.

21 Q. All right?

22 A. Yes, sir.

23 Q. So I don't want to give you the wrong idea
24 about how this process works. I --- I'm looking for, you

1 know, your best, honest recollection and testimony about
2 all this stuff. And it's not --- you know, it's not a
3 contest or ---

4 A. Sure.

5 Q. --- anything of that nature.

6 All right.

7 So Ellen Ruth Costlow comes in to see you the
8 evening of the same day that you called her?

9 A. I believe it was the same evening.

10 Q. To the best of your memory?

11 A. Yes, sir.

12 Q. Tell me what you remember. What was your
13 impression when --- when she came in to see you?

14 A. She --- she came to the state police barracks.
15 She sat down, and she --- well, I had a conversation
16 about her and Trooper Berry, which she denied having an
17 affair with Trooper Berry.

18 She then went on to say she was in the middle
19 of a divorce or in --- in the process of divorce and that
20 her soon to be ex-husband would not stop contacting her,
21 that she was being harassed daily with emails and text
22 messages.

23 Q. You say Ellen Ruth Costlow denied having a
24 romantic relationship with Christ Berry. Did she deny

1 knowing Trooper Berry?

2 A. No. No, she --- I don't believe she did deny
3 knowing Trooper Berry.

4 Q. Okay.

5 Tell me what you remember in that direction.

6 A. I really don't remember a lot. I remember
7 something to the effect that Trooper Berry was up in her
8 neighborhood conducting some sort of investigation. But
9 I don't know the specifics of the --- I don't remember
10 the specifics of the investigation or why he was up in
11 that neighborhood doing that.

12 Q. We do have some documentation on that. In
13 fact, I can show you documentation --- and this is from
14 2013 ---

15 A. Uh-huh (yes).

16 Q. --- when the 911 call was placed.

17 A. Okay.

18 Q. And the 911 call resulted in some state police
19 responding to the Costlow residence. Maybe you reviewed
20 some of that evidence in preparation for the deposition
21 today? No --- no bells going off?

22 A. No bells going off, sir. I know --- I know the
23 state police at least went up there at least once, but
24 I ---.

1 Q. Let me see if this might job your memory a
2 little.

3 A. Okay.

4 Q. And again, we can take the time necessary to
5 get into some of these documents.

6 A. Sure.

7 Q. And I am going to show you some documents in
8 the course of this, but you know, you're a
9 straightforward, attentive witness, and you have an
10 impressive memory. So we're covering a lot of ground
11 without the time necessary for a lot of document work.
12 So I'm going to take advantage of that.

13 There came a time when my client, Scott
14 Ballock, called and talked to you and he asked about the
15 fact that state police went to his estranged wife's
16 residence. And he questioned you as to why there was no
17 report of that police activity.

18 A. Yes, sir.

19 Q. And you were a bit --- affronted, I believe
20 would be a fair way to put it, by his questioning you
21 along that line.

22 A. I think that's a mischaracterization.

23 Q. Okay.

24 Well, let me just ask you personally, do you

1 remember having a conversation with Scott?

2 A. I remember having a conversation with Scott.

3 Q. You do remember that?

4 A. Yes.

5 Q. Okay.

6 Good. So tell me about his conversation that
7 you had with Scott Ballock.

8 A. From what I remember about the conversation, he
9 called in and asked about an incident that happened at
10 his house. And I believe he wanted a report, if I
11 remember correctly.

12 Q. Uh-huh (yes).

13 A. And ---.

14 Q. I believe he did.

15 A. Okay.

16 Q. Yeah.

17 A. And I explained how to get that report. Well,
18 he --- he asked me if there was a report filed. I
19 checked. There was not a report filed. So he questioned
20 me on why there wasn't a report filed.

21 Q. Okay.

22 You presumably went on your computer system,
23 called up a database in some fashion or whatever, and
24 were able to determine that there was no report on file?

1 A. The CI log did not show a report on file.

2 Q. What log?

3 A. Criminal Investigation log.

4 Q. Okay.

5 So you told Scott Ballock that there was no
6 report prepared?

7 A. Correct.

8 Q. What else do you remember about the
9 conversation?

10 A. I believe he asked me why there wasn't a report
11 filed. And I explained to him, you know, based upon the
12 investigating officers or the responding officers'
13 observations, and you know, it's up to them to --- to
14 initiate a report if they feel that it needs to be
15 initiated. But, you know, if they --- if, you know, a
16 trooper goes on a call, and there's no substance to that
17 call, then a report probably isn't going to be filed.

18 Q. Okay.

19 What do you remember about the substance of the
20 call, that is to say --- I realize as I listen to my own
21 questioning that that's probably a confusing way to
22 phrase it. Scott Ballock called you, told you that state
23 police had been to his residence, and his estranged wife
24 was currently living there.

1 And he wanted a copy of the report. You looked
2 in the Criminal Investigation log on your computer and
3 told him there was no report. And he wanted to know why.
4 You told him that the trooper who responded must have
5 judged it unworthy of a report.

6 Is that ---?

7 A. Correct. Yes, sir.

8 Q. Okay.

9 Do you know anything about what happened when
10 that --- who that trooper was, or what he found?

11 A. From what I remember, it was a verbal
12 altercation at his house or his --- that residence.

13 Q. All right.

14 They were estranged. Do you --- do you guys in
15 the state police use that word, estranged?

16 A. We can.

17 Q. When --- when someone is married to another
18 person, but by order of the family court, usually,
19 they're not living together.

20 A. Correct.

21 Q. Then they are said to be estranged.

22 A. Yes, sir.

23 Q. That's the way we sue that word in the law.
24 You guys use it that way, too?

1 A. We can. Yes, sir.

2 Q. Okay. All right.

3 So it is accurate to say that his wife lived
4 there, but he did not because they were going through a
5 divorce at the time. And that squares with your best
6 memory of what you learned about all of this ---

7 A. Yes, sir.

8 Q. --- at the time?

9 Who was the state police trooper who went to
10 the house?

11 A. I can't remember that, sir. I don't remember
12 that.

13 Q. All right.

14 A. I'd hate to speculate.

15 Q. All right.

16 Did you make any effort to find out at the time
17 who the trooper was?

18 A. I can't remember, sir.

19 Q. You don't remember if you tried to find out?

20 A. No, sir. I can't remember that.

21 Q. How was Scott Ballock in his attitude and ---

22 A. I remember ---.

23 Q. --- in the course of this conversation?

24 A. I believe his discourse came from when I told

1 him there wasn't a police report filed. And he
2 continually questioned me upon that. And I really didn't
3 have another answer for him except for the fact that it
4 was what it was, a verbal altercation that the
5 investigating --- or the responding officer didn't feel
6 like a report needed to be filed.

7 Q. Okay.

8 A. But he kept pressing upon that issue.

9 Q. Was there any policy or practice in effect at
10 the state police at the time of this response to the
11 Ballock residence in Thistledown as to whether a report
12 should be filed if a child, minor child, was present?

13 A. No, sir.

14 Q. If Summer Ballock, a minor child at the time,
15 was present at the Ballock residence when her mother and
16 Kenny Ice, Junior were having an argument, and the state
17 police came to the house about it, there'd be no
18 expectation on the part of the state police that the
19 trooper should formalize what they did, what they found,
20 what they did, in order to safeguard the interests of
21 that minor child?

22 A. It depended on the escalation of the --- of
23 the incident.

24 Q. Okay.

1 So I mean, we don't know who the trooper was,
2 but it wasn't you.

3 A. It was not me.

4 Q. So but --- but you are supervisory. You're a
5 lieutenant, and you supervisor troopers, so you're in a
6 position to know. If a trooper went to the residence,
7 there was no violence going on at the time, and upon
8 inquiring, it seemed that violence was not likely, then
9 it would be an acceptable policy and procedure for the
10 trooper to, you know, tell the people at the residence,
11 look, you know, if I have to come back here, it's going
12 to be a problem? And then go back, get in the car, you
13 know, let the station know that everything's ---
14 everything's okay, and that, you know, you're back onto
15 the next thing.

16 A. If ---.

17 ATTORNEY JEFFRIES: Object to the form.
18 I'm not sure if there was a question, and if there was,
19 I'm not sure what it was.

20 BY ATTORNEY CROOKS:

21 Q. That would be --- that would be an acceptable
22 approach to take on the part of whoever that trooper was?

23 A. If there wasn't anything going on. If there's
24 no criminal offense, yes, sir.

1 Q. When you show up, and there's physical violence
2 in flagrante right there in front of you, you know, then
3 that's a different story altogether. But if it's just a
4 verbal argument, and everybody's cool, then a trooper
5 doesn't have to fill out a report even if there was a
6 minor child present?

7 A. Correct.

8 Q. What do you know about Chris Berry
9 investigating in the Thistledown neighborhood?

10 A. Just from general recollection, there was
11 something about car break-ins.

12 Q. Okay.

13 A. But that's about all I know. I don't know if
14 he was following up on something. I have no --- that was
15 --- that's my general recollection.

16 Q. Ellen Costlow told you that she knew Chris
17 Berry, and it was because he'd been in the neighborhood
18 investigating car break-ins.

19 True?

20 A. That I do not remember. I don't remember that
21 --- that specific with her.

22 Q. Okay.

23 So you may have garnered your information about
24 Chris Berry's investigative activity in the Thistledown

1 neighborhood from some source other than Ellen Costlow?

2 A. From Chris or --- yeah. I don't remember that,
3 sir.

4 Q. Okay.

5 If Chris Berry was investigating car break-ins
6 in the Thistledown neighborhood, would that be something
7 that he would be obliged by the policy and procedure of
8 the state policy to document?

9 A. Sir?

10 Q. If Chris Berry was in the Thistledown
11 neighborhood investigating reports of car break-ins,
12 would that be the sort of investigative effort that would
13 --- you'd expect to be written? Put in writing? Kept on
14 file?

15 A. There would be --- that would be on his daily
16 activity sheet, his general activity of what happened
17 during that day.

18 Q. What if he went up and did that investigation
19 on his own time? Would there be ---?

20 A. On his own time?

21 Q. Would there be any record of it?

22 A. I --- I'm not too sure I know the question,
23 sir.

24 Q. All right.

1 Kind of an odd question, isn't it? I'm
2 suggesting that a state trooper would go up to
3 Thistledown neighborhood on his own time, off the clock,
4 and conduct an investigation to car break-ins in the
5 neighborhood. That --- that would sound very irregular,
6 wouldn't it?

7 A. In uniform or ---?

8 Q. I don't know if he was wearing his uniform at
9 the time.

10 A. I --- it would be very unlikely some trooper
11 would be investigating a crime on their off-duty hours.

12 Q. That would be very irregular, wouldn't it?

13 A. Yes, sir. It would be irregular.

14 Q. In your review of the discovery in this case,
15 have you seen the Monongalia County sheriff's report
16 indicating that deputies went to the Ballock household in
17 Thistledown neighborhood in 2013 in response to an
18 argument between Ellen Costlow and Kenny Ice, Junior?

19 A. In preparations for this case, sir?

20 Q. At any point during the course of this case.

21 A. I might have seen it during the investigation,
22 but I don't have any ---.

23 Q. You have a general memory of ---

24 A. I remember ---.

1 Q. --- being aware of it?

2 A. Yes. I have a general memory of being aware
3 --- general recollection of --- of yes, that, yes.

4 Q. In that report --- and again, we can take the
5 time to pull it up here, but in that report, I looked at
6 it as recently as last evening. That's why I'm recalling
7 it. It says in there that Ellen Costlow begged the
8 deputies not to prepare a report because she was involved
9 in a divorce case. She --- she didn't want --- she
10 didn't want the fact that there --- the police had to be
11 called to her residence to be documented as such that it
12 could wind up being used in the divorce case.

13 Does that stimulate memory of what you
14 reviewed?

15 A. No, sir, that does not.

16 Q. How about the mention of Trooper Berry in
17 the ---?

18 ATTORNEY JEFFRIES: Can we go ahead and
19 pull out the report ---

20 ATTORNEY CROOKS: Sure.

21 ATTORNEY JEFFRIES: --- if you want to
22 talk about it, Charles?

23 ATTORNEY CROOKS: Sure. It'll take me
24 just a moment.

1 ATTORNEY JEFFRIES: You print any extra
2 copies, by chance?

3 ATTORNEY CROOKS: I did, at least on
4 anything that I thought was likely to come up anyhow.

5 Let's do this. Let's mark that as Kief 1.

6 ---

7 (Whereupon, Deposition Exhibit 1, Policies
8 and Procedures, was marked for
9 identification.)

10 ---

11 ATTORNEY CROOKS: Here's a copy for you,
12 Todd.

13 ATTORNEY PHILLIPS: Thank you.

14 ATTORNEY CROOKS: Here's one for you. I
15 just came to that as I was looking for the --- the other
16 one.

17 All right.

18 This will be Kief 2.

19 ---

20 (Whereupon, Deposition Exhibit 2, Call
21 Summary Report, was marked for
22 identification.)

23 ---

24 ATTORNEY CROOKS: Could you hand one of

1 this to Mark for me? That way I don't throw it at you.

2 ATTORNEY JEFFRIES: Thank you.

3 ATTORNEY CROOKS: Yeah. It's probably a
4 good suggestion that you make, Mark. It's time we start
5 looking at some of these documents.

6 ATTORNEY JEFFRIES: I'll just represent to
7 you, we did not go into extensive document review in
8 preparation.

9 ATTORNEY CROOKS: Yeah, I understand.
10 Neither did we. It's funny how the longer these things
11 go on, the more time we got to live with these documents.
12 The case kind of comes to life.

13 Okay.

14 Gentlemen, indulge me just for a second to
15 proffer for our record what we've done just now.

16 BY ATTORNEY CROOKS:

17 Q. The record should show that we have done a
18 couple of things. One is we've marked a document as Kief
19 1. That document bears some identification numbers
20 beginning with Troopers 844, ending with Troopers 868.
21 These were produced to us March 21, 2018 by your Counsel,
22 Lieutenant.

23 I have gone through this and take it to be
24 responsive to our discovery requests in this case. We

1 asked for policies, procedures, that would apply during
2 the time of the events that we're talking about in this
3 litigation. And this is what we were given.

4 A. Sure.

5 Q. Okay.

6 And I take it that looking at Kief Number 1,
7 you can affirm for me that these, in fact, were
8 statements of policy and procedure that applied at the
9 time of, let's say, 2013, 2014, when investigation was
10 conducted on the part of the state police barracks in
11 Morgantown concerning a complaint made by Ellen Ruth
12 Costlow against her estranged husband, my client, Scott
13 Ballock?

14 A. Correct.

15 Q. Okay.

16 Would you expect that there should be other
17 policies and procedure documents included here?

18 A. Well, ---.

19 Q. Does this --- does it look this would be
20 everything you'd know to give us too?

21 A. Not that I know of, sir. That --- yes.

22 Q. Okay.

23 You don't know of anything?

24 A. No, I do not know of anything.

1 Q. All right.

2 Did you participate in trying to obtain this
3 information so that it could be produced, or was
4 something your lawyer did without help from you?

5 A. I don't remember supplying this.

6 Q. Okay. All right.

7 Have you reviewed the content of Kief Number 1
8 in preparation for your deposition today?

9 A. No, sir.

10 Q. Or did you just look at emails?

11 A. I'm sorry?

12 Q. I said did you review the content of Kief
13 Number 1 in preparation for today, or did you just look
14 at emails?

15 A. I did not review this document, sir. No.

16 Q. Kief Number 2 has also been marked. That
17 document bears a Monongalia County Sheriff's Office.
18 There's an address for the office, and there's a subtitle
19 Call Summary Report.

20 You with me?

21 A. Yes, sir.

22 Q. Okay.

23 This is the document that I was referring to
24 unaided by documentation when your Counsel suggested

1 maybe it'd be a good time to start marking and discussing
2 actual documents.

3 A. Yes, sir.

4 Q. You've seen documents like this before from the
5 county sheriff's office?

6 A. Just a few, sir.

7 Q. Okay.

8 A Call Summary Report, is this something the
9 deputy who responds to the scene prepares? Is that the
10 way you understand it?

11 A. That's what it says, sir. Yes, sir.

12 Q. Okay.

13 So you can see there's a narrative prepared by
14 Deputy Branden Snider?

15 A. Yes, sir.

16 Q. And this narrative was approved by Mansell
17 Floyd Jones. You see that on the first page?

18 A. Yes, sir.

19 Q. Says time cleared, August 12, 2013, 4:59. What
20 do you take that to mean?

21 A. Time cleared, I'm not ---.

22 Q. Time arrived, time cleared.

23 A. I see that, yes.

24 Q. Maybe those two things should be read together.

1 A. I got you.

2 Okay.

3 Q. I take that to mean that's when they arrived on
4 scene, and that's when they left scene.

5 A. That's what I would take it as, yes, sir.

6 Uh-huh (yes).

7 Q. Okay.

8 I'm only a lawyer, but ---

9 A. Yeah.

10 Q. --- I'm kind of a quick study. I'm a little
11 bit intuitive, too.

12 It says call type domestic dispute. You with
13 me there?

14 A. Yes, sir.

15 Q. Okay.

16 Now the location of this call was 51 Summit
17 Overlook Drive, Morgantown. That's out in Thistledown
18 neighborhood where the Ballocks lived?

19 A. Correct.

20 Q. Now at the time that this happened, August 12,
21 2013, the record will show that Ellen Ruth Costlow was
22 awarded the right to live in the family residence. I'll
23 just proffer that to you. Do you have any reason to
24 doubt or dispute that?

1 A. No, sir.

2 Q. Maybe your lawyer will even stipulate the
3 accuracy of that. Save us a little time.

4 ATTORNEY CROOKS: You okay with that,
5 Mark?

6 ATTORNEY JEFFRIES: I have no knowledge,
7 but I mean, do you want to represent it, we can go on an
8 assumption.

9 ATTORNEY CROOKS: Okay.

10 BY ATTORNEY CROOKS:

11 Q. I won't mislead you on that.

12 Now, there's a lot to this Call Summary Report.
13 I mean, the narrative goes on for --- well, we'll say a
14 third of the first page, the entire second page, the
15 entire third page, maybe a fifth of the fourth page.

16 I would also add that there was a second person
17 who contributed to this narrative. Maybe that accounts
18 for some of the length. There's a Lieutenant Jones,
19 beginning on the second page.

20 A. I see that.

21 Q. Yeah. About three fourths of the way down, it
22 says Lieutenant Jones' narrative?

23 A. Uh-huh (yes).

24 Q. Okay.

1 I take that to be Mansell Floyd Jones.

2 Do you know those --- those folks? Do you know
3 Mansell Jones?

4 A. I just know Lieutenant Jones in passing. I do
5 not know ---.

6 Q. Don't know Snider?

7 A. No, sir.

8 Q. Okay.

9 A. I might have met him sometime, but I don't
10 remember. Yeah.

11 Q. Well, you know, we've --- we've been taking a
12 few minutes here, and I haven't exactly left you in
13 silence to study this, but you have had a chance to kind
14 of look it over. Do you remember seeing this before?

15 A. If I saw it, it would've been in the
16 investigation stage of --- of all this. I --- I'm
17 reading this with a vague memory of it. But I don't know
18 if I read it or somebody told me about it. I don't
19 remember that.

20 Q. All right. Okay.

21 Well, one of the reasons I'm taking up your
22 time with this is because one of your troopers comes for
23 mention in this report. Do you see that?

24 A. On which part, sir?

1 Q. Okay.

2 A. Where are you at? Where are you at?

3 Q. I just --- I just saw that you were reviewing
4 it, and I just thought perhaps you had read mention of
5 Trooper Berry.

6 A. I --- I see that here, yes.

7 Q. Okay.

8 Your --- your looking at it where? On the ---?

9 A. First page.

10 Q. First page?

11 A. Uh-huh (yes).

12 Q. Because it gets mentioned more than once.

13 A. Yes, sir. That's why I asked.

14 Q. Uh-huh (yes). Fair --- fair enough.

15 So on the first page, Mrs. Ballock, which
16 that's going to be Ellen Ruth Costlow. You --- you
17 understand that, right?

18 A. Yes, sir.

19 Q. Okay.

20 She was told by the deputy that, you know, if
21 he, Trooper Berry, was already investigating the incident
22 --- and by incident, there's some back reference here to
23 Ellen Costlow saying that a piece of personal property
24 had been stolen. You see that?

1 A. Yeah.

2 Q. Maybe --- maybe I just should give you a few
3 minutes to --- to review this.

4 A. Probably.

5 Q. You know, I think that might be a much more
6 efficient approach here. I --- I hate to just sit around
7 in silence, but ---.

8 COURT REPORTER: We can go off the record,
9 if you want.

10 ATTORNEY JEFFRIES: Yeah. We can go off
11 the record for a second.

12 COURT REPORTER: Will do.

13 ---

14 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

15 ---

16 ATTORNEY CROOKS: All right.

17 Let's go back on the record.

18 We've taken a short break, and during that
19 time, we took the opportunity to review this Kief Exhibit
20 Number 2, which is pretty much four full pages of
21 information.

22 BY ATTORNEY CROOKS:

23 Q. Now that I've left you alone long enough to
24 actually read it, let me repeat a question I asked

1 earlier. Do you have memory of seeing this before?

2 A. Sir, I believe I have a vague recollection of
3 seeing this before.

4 Q. Okay.

5 You have seen it. You just can't tell me when?

6 A. Correct. Yes, sir.

7 Q. All right.

8 Now, what we have here is a narrative by two
9 police officers. They're --- they're deputies in the
10 sheriff's office. You know one of them. They're ---
11 they're describing the course of their response to
12 Ballock residence. And we see in both narratives that
13 Ellen Costlow was texting Trooper Berry. You can see the
14 first reference to that at the top of page two, Deputy
15 Snider's narrative?

16 A. Uh-huh (yes).

17 Q. Mrs. Ballock stated she was texting Trooper
18 Berry about meeting him earlier in the day to speak with
19 him about the computer. That's the computer she said had
20 been stolen?

21 A. Correct.

22 Q. Okay.

23 And apparently, it was about that time,
24 according to her account, that Kenny Ice showed up and

1 they argued.

2 Then over on the third page in the third full
3 paragraph, Mansell Jones, Lieutenant Mansell Jones,
4 reports that Ellen Costlow told him that West Virginia
5 State Police Trooper Berry had been at her home that day
6 or the day before in reference to a missing laptop that
7 she said Kenny Ice had stolen. And that Ballock said ---
8 when he said Ballock, he's referring to Ellen Costlow,
9 said that Kenny Ice accused her of sleeping with Berry.

10 This is consistent with the way Deputy Snider
11 wrote it up. You see back on page two, top paragraph.
12 Mrs. Ballock stated at some point Mr. Ice looked at her
13 text message and saw she was texting Trooper Berry. And
14 he got angry, and accused her of sleeping with him.

15 So if --- if Trooper Berry, all right, was
16 having a relationship that included sexual relations with
17 Ellen Costlow, then he should not have been at her
18 residence on official business investigating the theft of
19 a laptop computer.

20 Would you agree?

21 A. I agree.

22 Q. Yeah. And why would that be inappropriate
23 conduct on his part?

24 A. Why would it be inappropriate conduct on his

1 part? If you're having a relationship with a person, you
2 don't take a complaint from that person. You leave that
3 up to another police officer.

4 Q. Why?

5 A. Impartiality.

6 Q. All right.

7 The theft of a laptop computer, would that be
8 the sort of thing that a state police trooper would
9 ordinarily investigate?

10 A. We investigate any crime, sir.

11 Q. Okay.

12 So the nature of the complaint doesn't tell us
13 anything about ---

14 A. No, sir.

15 Q. --- his being present?

16 Do you recall talking with Trooper Berry about
17 being present at Ellen Costlow's residence?

18 A. No, sir. I do not.

19 Q. Okay.

20 You did have a conversation with Trooper Berry
21 and asked him in that conversation if he had a personal
22 relationship that included sex with Ellen Costlow?

23 A. Correct.

24 Q. We're covered that. Tell me, now that you've

1 reviewed this Kief Exhibit 2, which is a report of an
2 incident that happened August 12, 2013, would --- does
3 that help you remember when you had this conversation
4 with Trooper Berry and asked him if he was having sex
5 with Ellen Costlow?

6 A. It was around that time, sir.

7 Q. It was about that same time?

8 A. Around it, yes, sir.

9 Q. Okay.

10 Would this incident of August 12, 2013 that is
11 the subject of Kief Exhibit 2 have occurred after the
12 state police responded to the Ballock residence, but
13 rendered no report about it?

14 A. I don't know that, sir.

15 Q. Okay.

16 Can you search your memory and tell me if
17 having reviewed this Kief Exhibit Number 2 refreshes your
18 recollection as to whether your discussion on the
19 telephone with my client, Scott Ballock, about the state
20 police going to his estranged wife's residence. Did that
21 telephone conversation precede this incident of August
22 12th?

23 A. I --- I don't know that, sir.

24 Q. Okay.

1 So you participated in the --- before I get
2 into that, let me --- let me have a second here.

3 I see mentioned in the narratives rendered by
4 Deputy Snider as well as Lieutenant Jones that both
5 officers were asked by Ellen Costlow not to mention their
6 names in any reports on this.

7 A. Yeah. I saw that in Deputy Snider's, but I
8 don't know if I saw that in Lieutenant Jones'.

9 Yes, sir. I see that now.

10 Q. So both officers record that they had been
11 asked by Ellen Costlow, look, you know, I don't --- I
12 don't want my name used in any police reports about this?

13 A. According to this document, yes, sir.

14 Q. Yet they did so?

15 A. Yes.

16 Q. Why do you --- I mean, do you have memory,
17 maybe in your own personal experience as a trooper
18 responding to domestic calls, people making that kind of
19 request? Look, I'm involved in a divorce. Would you
20 please leave my name out of your report?

21 A. I can't remember anything off the top of my
22 head, sir.

23 Q. Nobody ever asked you to do something like
24 that?

1 A. I can't remember anything off the top of my
2 head, sir.

3 Q. Okay.

4 So you regard such as request from Ms. Costlow
5 as being little on the unusual side, wouldn't you?

6 A. Unusual, yes, sir.

7 Q. You saw mention in here that Mr. Ice had the
8 opportunity to refer charges against Ellen Costlow and
9 declined?

10 A. Correct.

11 Q. In fact, she cut him with a knife according to
12 this narrative.

13 Right?

14 A. He said she cut her (sic). She says he cut
15 himself yes.

16 Q. There was a cut on his arm, and there was a
17 bloody knife found downstairs.

18 Right?

19 A. Yes.

20 Q. That's --- that's fairly solid evidence to
21 indicate that she assaulted him with a knife and cut him?

22 ATTORNEY JEFFRIES: I'm going to object to
23 the form.

24 BY ATTORNEY CROOKS:

1 Q. There would be enough there that these deputies
2 were warranted to advise Mr. Ice that he could make a
3 complaint against her?

4 A. Yes. Based upon his statement, yes, sir.

5 Q. The fact that Mr. Ice was not supposed to be
6 present at the residence, do you --- do you make note of
7 that reference in this --- in these narratives also?

8 A. I saw --- I read that, yes, sir.

9 Q. Okay.

10 Now, these deputies went to Cindy Scott, the
11 assistant prosecuting attorney, according to page two of
12 Deputy Snider's narrative. He says that he spoke with
13 Cindy Scott on August 20, which was about eight days
14 after the incident. And according to Deputy Snider's
15 narrative, Mrs. Scott felt that there was insufficient
16 evidence to identify the primary aggressor and charge
17 anyone at this time. So she closed it.

18 That sort of thing happens from time to time in
19 these domestic cases, doesn't it?

20 A. Yes, sir.

21 Q. Okay.

22 Now, at some point after, you received a phone
23 call from Tom Ballock, Senior complaining about Chris
24 Berry. And then you inquired of Berry, as you explained

1 in the deposition already.

2 Ellen Costlow came in to see you. She told you
3 at that time that she wanted to bring a complaint against
4 her estranged husband, didn't she?

5 A. No, sir.

6 Q. Okay.

7 She did not?

8 A. No, sir.

9 Q. What did --- what was her intention? Did she
10 say?

11 A. Her intention was to talk to me about the ---
12 the affair, and she stated she was being harassed by her
13 soon to be ex-husband.

14 Q. Okay.

15 There came a time when Ellen Costlow did
16 communicate with you to tell you that she wanted to make
17 a complaint against Scott?

18 A. After she knew she could.

19 Q. Did you --- were you the one who educated her
20 as to the option of making a criminal complaint against
21 Scott?

22 A. Yes, like criminal investigation. Yeah,
23 opening up a criminal investigation. Criminal complaint,
24 Yes, sir.

1 Q. Okay.

2 When you told her she would have to sign a
3 paper saying that he was harassing her ---?

4 A. I don't if I told her she had to sign a paper.
5 We don't ---

6 Q. Okay.

7 A. --- do that.

8 Q. Okay.

9 Well, yeah. Rather than me do it that way, let
10 me just put it this way. You explained to her what the
11 process of making a criminal complaint against Scott
12 would consist of?

13 A. Correct.

14 Q. So ultimately, there --- there was an
15 investigation opened?

16 A. Yes, sir.

17 Q. And based on the documents that have been
18 produced in discovery, it --- it appears to me that you
19 were probably the trooper who got the ball rolling. You
20 --- you're the one who officially got the investigation
21 started.

22 Am I right?

23 A. I kicked it upstairs to, well, the first
24 sergeant, which went to the captain.

1 Q. Okay.

2 A. Yes.

3 ATTORNEY CROOKS: Let's mark this Number
4 3.

5 ---

6 (Whereupon, Deposition Exhibit 3, 8/22/13
7 Email, was marked for identification.

8 ---

9 ATTORNEY CROOKS: And I don't know that I
10 have extra copies of this, so I'll indulge the time
11 necessary for your lawyer and Mr. Phillips both. I'll
12 let you start if you want, Mark.

13 ATTORNEY PHILLIPS: If you don't mind,
14 I'll just look over his shoulder.

15 ATTORNEY CROOKS: Sure.

16 And let me go ahead and ask the reporter
17 to mark the next one in sequence that I'm going to ask.

18 ---

19 (Whereupon, Deposition Exhibit 4, Memo
20 from Captain Merrill, was marked for
21 identification.)

22 ---

23 ATTORNEY CROOKS: Thank you.

24 I'll let the three of you fellows look at

1 those documents real quick while I excuse myself for just
2 a moment. I'll be right back. Hopefully, both of us
3 will use our time wisely.

4 ---
5 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

6 ---
7 COURT REPORTER: Back on the record.

8 ATTORNEY JEFFRIES: He's got them.

9 ATTORNEY CROOKS: Yeah. I --- I got them
10 here just so I can ask a couple questions.

11 We're back on the record after a short
12 break.

13 BY ATTORNEY CROOKS:

14 Q. We've identified Kief Exhibit 3 and Kief
15 Exhibit 4. And I believe these documents will more or
16 less prove up the answer you've already given, which is
17 that you kicked it upstairs, I think you said was the ---
18 what you did. You asked your superior for permission to
19 open an investigation.

20 So let me show you Exhibit Number 3. Can you
21 tell us what that is?

22 A. That's an email to my captain, James Merrill,
23 at the time.

24 Q. Okay.

1 Why were you emailing your Captain?

2 A. Anytime another police officer or public
3 official or whoever --- we have to get permission to
4 investigate them from Charleston, more or less.

5 Q. Why is that?

6 A. I guess they don't want us opening
7 investigations on other police officers or public
8 officials without them knowing it.

9 Q. Okay.

10 Have you ever known a time when you sent an
11 email of this kind, and the response was no you have no
12 authority to open an investigation into this individual?

13 A. No, sir.

14 Q. Can you think of any other time when you ever
15 had to write an email like this and ask for permission to
16 investigate another police officer?

17 A. No, sir.

18 Q. At the time of Kief Exhibit Number 3, which was
19 August 20, 2013, I think, --- am I right?

20 A. Yes, sir.

21 Q. Okay.

22 ATTORNEY JEFFRIES: Correction. August
23 22nd.

24 THE WITNESS: I'm sorry, 22nd, yes.

1 BY ATTORNEY CROOKS:

2 Q. Okay.

3 A. Yes.

4 Q. Thank you.

5 Kief Exhibit Number 3 is your email of August
6 23 to your captain. It looks like there's a second page
7 to that, and I don't have it. Do you have any memory of
8 this document now that we've looked at it as much as we
9 have? You remember doing this?

10 A. I remember sending an email. I ---.

11 Q. Okay.

12 A. Yeah. Yeah. Yeah, just ---.

13 Q. Best of your recollection, this was the first
14 time you'd ever sent an email of this kind to the captain
15 asking for permission to open an investigation because it
16 concerned a high profile person or a member of the law
17 enforcement community.

18 True?

19 A. True.

20 Q. Okay.

21 I believe --- make a point a point of it to
22 suggest that that might be one of the reasons you have of
23 --- of doing this. You never had to do it before.

24 Did you have any conversations with the captain

1 on the telephone?

2 A. Yes, sir.

3 Q. Okay.

4 Tell me what you remember.

5 A. I --- I just called him and explained the
6 merits of what was going on with the whole thing. And he
7 said, well, email --- put it in writing. Give me ---
8 give me an email about what --- opening an investigation.

9 Q. Okay.

10 Now, the reason you did this email to Captain
11 Merrill was because Ellen Costlow had come to see you,
12 and she offered to give you a collection of emails from
13 her attorney, Matt Stout?

14 A. Correct.

15 Q. Did you have those emails, and did you review
16 them before you asked for permission from Captain
17 Merrill?

18 A. No, sir.

19 Q. Okay.

20 So you were simply seeking permission to take
21 advantage of the offer that Ellen Costlow had made to you
22 that she would provide this evidence?

23 A. Correct.

24 Q. Okay.

1 And can you tell me if you had any conversation
2 with Captain Merrill to the effect that there has been
3 some allegations made that there was a sexual
4 relationship between the Complainant, Ellen Costlow, and
5 one of your troopers, Chris Berry?

6 A. I can't remember that, sir.

7 Q. Don't you think that's the sort of thing you
8 --- would be on your mind as you were talking to your
9 captain?

10 A. Again, I can't remember the --- the specifics
11 of the conversation. I don't know if I gave that to him
12 or not. I don't know.

13 Q. Did your captain ask you, look, why do you ---
14 why do you want to get involved in investigating a case
15 that's in front of the family court judge? Why don't you
16 just send her to the family court judge?

17 A. Because we were investigating a criminal
18 complaint, not a civil complaint.

19 Q. You understand that the family court judge
20 would have authority to order restrictions on
21 communication between parties who are divorced?

22 A. Yeah.

23 Q. You've been through a divorce yourself.
24 Right?

1 A. Right. We never came to that.

2 Q. That was never necessary in your case, but ---

3 A. No, sir.

4 Q. --- I don't surprise you at all to tell you
5 that a family court judge has that authority?

6 A. It wouldn't surprise me, sir.

7 Q. Did it occur to you that you might refer her to
8 the family court judge rather than open a criminal
9 investigation?

10 A. No, sir.

11 Q. After all, she had cut Kenny Ice in a domestic
12 dispute, and there was no reason to make an arrest or
13 open an investigation into --- into that. And the state
14 police had responded to her residence on at least one
15 occasion and didn't even deem it necessary to make a
16 report.

17 ATTORNEY JEFFRIES: Objection, suspects.

18 BY ATTORNEY CROOKS:

19 Q. In light of --- in light of what we know about
20 the broad discretion that the state police has, I mean,
21 you were under no obligation to open up an investigation
22 into this complaint that Ellen Costlow was making, were
23 you?

24 A. My obligation is to the victim.

1 Q. So you felt obliged to Ellen Costlow?

2 A. If there was a criminal infraction, yes.

3 Q. At what point in time did you come to the
4 conclusion that there was enough evidence to seek the
5 criminal warrant for the arrest of Scott Ballock?

6 A. It wasn't mine. I had nothing to do with that,
7 sir.

8 Q. Okay.

9 Were you consulted on it?

10 A. I was being updated on the progress of the
11 investigation.

12 Q. All right.

13 According to Exhibit 3, Captain Merrill wanted
14 to be kept in the loop. He wanted email reports on this.
15 Did you keep him advised?

16 A. That was --- that is not --- that email is not
17 --- I'm sorry. The memo is not sent to me, sir.

18 Q. Pardon me. I --- I'm misspeaking it. I
19 apologize. I'm just trying to move along her, and I'm
20 getting a little ahead of myself.

21 A. That's all right.

22 Q. Let me show you Exhibit Number 4. What is
23 that?

24 A. That is a Troop 1 Memorandum to Corporal

1 Gaskins of the Morgantown Detachment.

2 Q. Okay.

3 And who's it from?

4 A. Captain Merrill.

5 Q. Okay.

6 And what was Captain Merrill instructing
7 Corporal --- then Corporal Gaskins?

8 A. To open up an investigation.

9 Q. So the fair implication here is that Exhibit 4
10 occurred because it was instigated by Exhibit 3? In
11 other words, you asked Captain Merrill for authority and
12 he granted it. And he personally directed Corporal
13 Gaskins to open the investigation?

14 A. Correct.

15 Q. All right.

16 And the reason this echelon of authority at the
17 state police was directly involved here is because there
18 was an FBI agent at issue.

19 True?

20 A. Yes, sir.

21 Q. Did you make any contact with the FBI in the
22 course of your investigating?

23 A. During the course of the whole ---?

24 Q. Prior to the time that my client was arrested

1 on September 13th, 2013, did you contact the FBI?

2 A. I --- I do not know, sir. I cannot remember
3 who contacted the FBI.

4 Q. All right.

5 I take it by your answer that you're satisfied
6 that there was somebody at the state police who contacted
7 the FBI about Scott Ballock prior to his arrest on
8 September 13, 2013?

9 A. Correct.

10 Q. What was the point of that contact?

11 A. Twofold, to let the agency that he was hired
12 under know that there was a criminal investigation being
13 conducted, and two, professional courtesy.

14 Q. Did you direct someone to make that contact?

15 A. I do not remember that, sir.

16 Q. Would corporal Gaskins have had the authority
17 to contact the FBI for the two purposes that you just
18 identified?

19 A. Yes, sir.

20 Q. Okay.

21 Who was in charge of the investigation,
22 Corporal Gaskins?

23 A. He was the investigating officer, sir.

24 Q. Okay.

1 All right. I appreciate your answering me.

2 Does that mean he was in charge of it?

3 A. Yes, sir.

4 Q. Okay.

5 The reason I'm asking you is Captain Merrill
6 wanted to be kept advised. He wanted to know what was
7 happening with all of this.

8 Right?

9 A. Yes, sir.

10 Q. And presumably, based on what you told me up to
11 this point, Captain Merrill wanted to be kept in the loop
12 because the person under investigation here was a Federal
13 Bureau of Investigation agent?

14 A. Correct.

15 Q. Do you know if Corporal Gaskins, in fact, kept
16 Captain Merrill advised by email? Were you copied on his
17 emails?

18 A. I don't remember. I don't know that, sir. I
19 don't remember being copied on emails.

20 Q. Okay.

21 Captain Merrill in Exhibit number, what is it,
22 4?

23 A. Yes, sir.

24 Q. Did he copy you?

1 A. On?

2 Q. Did he copy you on his email to --- or his memo
3 to Corporal Gaskins?

4 A. I don't remember that, sir.

5 Q. Does it say?

6 A. No, sir.

7 Q. Well, I only have the one copy, and I'm not
8 looking at it so ---.

9 A. No, sir. It does not.

10 Q. No matter how many times I've been down through
11 this stack, and I've tried to memorize everything, but I
12 guess I'm getting too old to be able to do that.

13 So you have a memory as to whether you were
14 kept advised of the investigation into Ellen Costlow's
15 complaint against Scott Ballock prior to Scott's arrest
16 on September 13, 2013.

17 A. I didn't say that, sir.

18 Q. I'm asking.

19 A. Yes, sir. But you made a statement, and I'm
20 --- that's not correct.

21 Q. Sounded like a statement, but it was intended
22 to be a question. Let me put it a little more clearly
23 for you. Were you kept advised of the investigation into
24 Ellen Costlow's criminal complaints against Scott Ballock

1 prior to the day of his arrest?

2 A. Yes, sir.

3 Q. How were you kept advised?

4 A. I was Corporal Gaskins' supervisor. So he
5 would, you know, periodically talk to me about what's
6 going with the cases, his investigation.

7 Q. Okay.

8 What sort of things would he tell you?

9 A. Just an update on the investigation, what was
10 going on, what he found.

11 Q. Okay.

12 Based on those periodic briefings, what did you
13 understand to be the course of the investigation? How
14 did it go down? How did --- how was it done? Was it
15 done in compliance of the protocols laid out in Kief
16 Exhibit Number 1?

17 A. I --- I do not know that, sir.

18 Q. Would it have been your responsibility to see
19 to it that Corporal Gaskins complied with the
20 requirements laid out in Kief Exhibit Number 1?

21 A. Explain that.

22 Q. You're his supervisor?

23 A. I am his --- was his supervisor, yes, sir.

24 Q. He was doing an investigation under your

1 supervision.

2 A. Yes.

3 Q. And the captain was being kept in the loop on
4 how the investigation proceeded?

5 A. Correct.

6 Q. Did you, in fact, make a point to see to it
7 that the policies and procedures laid out in Kief Exhibit
8 Number 1 were followed in the investigation of Ruth Ellen
9 --- Ellen Ruth Costlow's criminal complaint against Scott
10 Ballock?

11 A. It's my opinion that Corporal Gaskins was
12 following all criminal --- the procedures, yes, sir.

13 Q. Do you know if Captain Merrill was told that
14 the decision had been made to seek an arrest warrant for
15 Scott Ballock?

16 A. That's something ---.

17 Q. Before he was --- let me --- let me restate the
18 question. It's been two years. I can almost read the
19 transcript. Let me articulate the question.

20 Do you know if Captain Merrill was told
21 beforehand that the decision had been made to obtain an
22 arrest warrant for Scott Ballock?

23 A. That would've been done, sir.

24 Q. Why?

1 A. Because before we arrested any police officer
2 or any official, we would've told that to our superiors.

3 Q. Do you know if Captain Merrill provided express
4 authority to proceed?

5 A. I do not know that, sir.

6 Q. Do you know if Captain Merrill ever had any
7 contact with the FBI?

8 A. I do not know that, sir.

9 Q. Now, there was an FBI agent present at the
10 family court proceeding on September 13, 2013 when my
11 client Scott Ballock was arrested.

12 Are you aware of that?

13 A. Repeat the question, sir.

14 Q. Sure. The day my client was arrested ---

15 A. Yes, sir.

16 Q. --- in family court on the count, there was a
17 representative from the FBI present?

18 A. Correct. Yes, sir.

19 Q. You know that?

20 A. Yes, sir.

21 Q. And in fact, one of the reasons you know that
22 is because the state police advised the FBI that we're
23 going to execute an arrest warrant for one of your agents
24 at the family court proceeding?

1 A. Correct.

2 Q. Were you the one who notified the FBI of that
3 fact for the representative to be there?

4 A. I do not remember that, sir.

5 Q. And who actually the arrest warrant?

6 A. I was there. There was another trooper there
7 when we went upstairs to the magistrate's office to get
8 --- to have Mr. Ballock arraigned. I don't remember
9 whose signature is on the arrest warrant.

10 Q. I think it was yours.

11 A. Okay.

12 I --- I can't remember that, sir.

13 Q. I can show it to you here if we need to.

14 So did you interview Scott Ballock before you
15 arrested him?

16 A. No, sir.

17 Q. Did you reach out to make contact with Scott
18 Ballock prior to making the decision to arrest him to let
19 him know that you were investigating his communications
20 with his wife?

21 A. I didn't make that decision, sir.

22 Q. Who did?

23 A. That'd be the investigating officer and the
24 prosecuting attorney.

1 Q. So that would be Corporal Gaskins who made that
2 decision?

3 A. And the prosecuting attorney, sir.

4 Q. Who was that?

5 A. Cindy Scott.

6 Q. Cindy Scott. Did you have any conversations
7 with Cindy Scott in the course of the investigation?

8 A. Not that I can remember, sir.

9 Q. So your input was not solicited by Corporal
10 Gaskins prior to proceeding with getting permission from
11 Captain Merrill to arrest Scott Ballock?

12 A. Captain Merrill wouldn't have given permission.
13 He would've known that we were arresting him. The
14 permission would've come from the prosecuting attorney's
15 office.

16 Q. Okay.

17 So the prosecutor, according to your
18 understanding, authorized the obtaining of an arrest
19 warrant for Scott Ballock?

20 A. Correct.

21 Q. Was there ever any discussion, either between
22 you and Cindy Scott or you and Corporal Gaskins, about
23 talking to Scott Ballock to try and get his side of this?

24 A. Not that I remember, sir.

1 Q. I know there were a lot of emails. My client
2 was deposed about many of them. You have looked at them.
3 I guess you have even looked at some of those emails
4 before your deposition here today.

5 True?

6 A. Correct.

7 Q. Okay.

8 Those emails, do you know how many of them were
9 instigated by Ellen Ruth Costlow?

10 A. Emails to?

11 Q. Her.

12 A. Emails from me to her?

13 Q. No.

14 A. I'm sorry.

15 Q. That's all right.

16 In my client's deposition, he was asked about a
17 great many texts and emails that he sent to Ellen Ruth
18 Costlow.

19 In fact, these were the same emails that the
20 state police obtained from Matt Stout, one of the lawyers
21 representing Ellen Ruth Costlow in the divorce.

22 Right?

23 A. Okay.

24 Q. Am I --- am I on the bean so far with you here?

1 A. Yes, sir.

2 Q. Okay.

3 Are you aware, by the way, that the day after
4 Matt Stout provided the disc of emails to the state
5 police that his firm withdrew as counsel for Ellen Ruth
6 Costlow?

7 A. No, sir.

8 Q. Do you know how many different lawyers have
9 represented Ellen Ruth Costlow?

10 A. No, sir. I don't.

11 Q. As you were going through the emails that were
12 provided to you, were you counseling with Corporal
13 Gaskins on all these, what they meant, whether they
14 reached the level of criminal conduct under the West
15 Virginia Code?

16 A. As I was going through the emails, sir?

17 Q. Yeah. Did you go through the emails as part of
18 the investigation, or did you just turf all that out to
19 Corporal Gaskins?

20 A. Corporal Gaskins was the investigating officer.
21 He would speak to me about certain emails.

22 Q. I --- I know he did. And that's why ---

23 A. Yes.

24 Q. --- I'm asking you this ---.

1 A. I'm just trying to be clear on this.

2 Q. Well, I appreciate that. And I believe you.
3 You're very attentive and forthright with us. I
4 appreciate that.

5 I know that Corporal Gaskins was the
6 investigating officer.

7 A. Yes, sir.

8 Q. I know that he had the lead on going through
9 these emails, and I also know that he kept you advised,
10 and the two of you talked ---

11 A. Correct.

12 Q. --- at different times. And I guess I may have
13 worded my question poorly, but the point of it is, you
14 know, were you helping him to assess these emails to
15 determine whether they constituted criminal conduct under
16 the West Virginia Code?

17 A. Yes, sir. I'll agree to that.

18 Q. Okay.

19 And did you harbor an opinion on that issue?

20 A. If they broke State Code?

21 Q. Uh-huh (yes).

22 A. Yes, sir.

23 Q. What was your opinion?

24 A. Yes, they did.

1 Q. Okay.

2 What, in particular, left you satisfied that
3 those emails constitute criminal conduct under the Code?

4 A. Without going through the emails and pointing
5 them out ---.

6 Q. There are a lot of them.

7 A. There are --- there are a ton of them. That's
8 one of the harassment of the --- of the amount of emails
9 and text messages, the victim being bombarded with text
10 messages and emails.

11 Q. Were you aware, in fact, I believe there's
12 documentation to this effect in this case to the affect
13 that the family court Judge had ordered that
14 communications be restricted to matters of child custody?

15 A. No, sir. I did not know that.

16 Q. Do you recall Judge Minor, the family court
17 judge, commenting at the time of Scott Ballock's arrest
18 that he couldn't help but feel this was being staged for
19 his benefit?

20 A. I did not speak with Judge Minor, sir.

21 Q. Wasn't my question.

22 A. Repeat your question.

23 Q. Do you recall hearing Judge Minor, the family
24 court Judge on the Ballock and Costlow divorce,

1 commenting at the time of the arrest that he could not
2 help but feel that this was being staged for his benefit?

3 A. I remember Judge Minor having some discourse
4 with how it was done until it was explained to him.

5 Q. Okay.

6 What do you remember about that?

7 A. That --- I believe it was one of the
8 prosecutors explained to him what was going on
9 afterwards.

10 Q. All right.

11 During the course of that colloquy between
12 Judge Minor and Cindy Scott, do you recall hearing Judge
13 Minor comment to the effect that he couldn't help but
14 believe that this was all being staged for his benefit?

15 A. I remember him having some discourse with it,
16 sir. I don't --- I don't remember any specific verbiage
17 on that.

18 Q. Do you understand that the topic that Judge
19 Minor was addressing in court that day was custody of the
20 children?

21 A. No, I did not know that, sir.

22 Q. Let me ask you this. Did you have any
23 discussion with Cindy Scott as to why it was even
24 necessary to go through the formality of arresting Scott

1 Ballock? Why --- why you couldn't just let him know,
2 look, you know, we got these warrants for you. You want
3 to come and report voluntarily? Why didn't you do that?

4 A. Because of some of the tones of the emails,
5 some of the threatening manners of the emails. We did
6 not feel like that was going to be a --- an outcome to
7 this that we wanted to see.

8 Q. I don't --- I don't follow you.

9 A. Some of the --- the tones of the emails were
10 quite worrisome to us. Letting him know that there was
11 warrants on an investigation and he was going to be
12 arrested, we didn't know if he was going to have any
13 conversations with his ex-wife about it, or whatever.

14 And we knew part of his bail agreement was to
15 have no conversations with Ms. Costlow. We weren't going
16 to give him an option of --- of having any conversations
17 with Ms. Costlow about the arrest.

18 Q. Okay.

19 Was the FBI told that the state police was
20 worried that Scott might act out in violence?

21 A. I don't know what the FBI's thought was on
22 that.

23 Q. Not my question. Was the FBI told by West
24 Virginia State Police that they felt it was going to be

1 necessary to catch him on the hop, and arrest Scott
2 Ballock in front of the magistrate --- or the family
3 court judge in order to deny him the opportunity of
4 acting out violently?

5 A. We had the discussion with the FBI about some
6 of the emails being worrisome, about tone and in a
7 threatening manner.

8 Q. Did West Virginia State Police ask the
9 permission of the FBI to arrest one of their agents?

10 A. Ask permission, sir?

11 Q. Yeah, as opposed to working with the FBI to
12 arrange for something less traumatic than an arrest with
13 handcuffs in front of the family court Judge?

14 A. I don't believe there was handcuffs, sir.

15 Q. Okay.

16 A. They didn't do that.

17 Q. But back to the point of my question, was there
18 any effort made by the West Virginia State Police to work
19 with the FBI to arrange for Scott to, you know, surrender
20 to the magistrate for arraignment rather than have to
21 take him into custody and arrest him?

22 A. No, sir. That wasn't offered.

23 Q. Why not?

24 A. That wasn't offered by the FBI.

1 Q. Why wasn't it suggested by the state police?

2 A. I don't know that, sir. I --- I have no clue
3 about that, sir.

4 Q. Isn't it true, in fact, the reason that was
5 never offered or suggested or discussed with the FBI was
6 in an effort to try and prejudice Scott Ballock in the
7 eyes of his employer, the FBI, and to prejudice him in
8 the eyes of the family court Judge, Judge Minor?

9 A. No, sir, not at all. That was not the intent.

10 Q. Would you agree that that was certainly the
11 effect?

12 A. No, sir.

13 Q. You don't --- you don't think that there was
14 any prejudice to Scott Ballock in the eyes of his
15 employer, the FBI, to ---?

16 A. If there was ---.

17 Q. Rather than the state police contact them, and
18 say that they were worried that he might be violent, he
19 was going to have to be taken into custody?

20 A. If we had any prejudice against Mr. Ballock
21 about his employer, we would have went to his place of
22 work and placed him under handcuffs and taken him out of
23 his workplace.

24 Q. What did you understand the purpose of the

1 presence of the FBI representative to be in court the
2 date that you arrested Scott Ballock?

3 A. They wanted to be present, sir. I don't know
4 what their purpose was.

5 Q. They didn't explain?

6 A. No, sir. Not that I can remember.

7 Q. Okay.

8 Did Scott Ballock put up any resistance to
9 being arrested?

10 A. No, sir.

11 Q. How did he handle the whole thing?

12 A. I don't remember him, but I just --- he was
13 quite calm about it, I believe. I don't think he said a
14 word, if I remember correctly.

15 Q. So in fact, the concern about him possibly
16 being, you know, violent or even loud and obnoxious about
17 it, those worries and fears were not born out, were they?

18 A. Of being obnoxious about it, sir?

19 Q. Yeah. I mean, he didn't raise his voice ---

20 A. No, sir. He did not raise his voice at all.

21 Q. --- or say how dare you or ---?

22 A. No, sir.

23 Q. Nothing to that effect?

24 A. No, sir.

1 Q. Is it true that, following his arrest, Scott
2 Ballock, more than once, offered to the state police to
3 waive his rights against self-incrimination and to be
4 interviewed by the state police?

5 A. That would've went to Corporal Gaskins, sir. I
6 don't know that.

7 Q. He conferred with you about the investigation?

8 A. He did.

9 Q. Okay.

10 Did he tell you that Scott Ballock had offered
11 more than once ---?

12 A. Not that I can remember, sir.

13 Q. Is right now the first time you're aware that
14 Scott Ballock had offered to do that?

15 A. I can't remember when I became aware of that,
16 sir. I do not remember that.

17 Q. I take it then just now is not the first time
18 you were made aware of that?

19 A. No. I was here at the deposition with Mr.
20 Ballock.

21 Q. Okay.

22 A. And he --- I'm sorry. I'm sorry. I did know
23 that, through the websites.

24 Q. The websites? You're referring to Scott's

1 father's ---

2 A. Yes, sir.

3 Q. --- website?

4 Okay.

5 Did the West Virginia State Police refuse to
6 interview Scott Ballock?

7 A. Not that I know of, sir.

8 Q. Well, he offered to be interviewed, and he was
9 never interviewed.

10 A. Okay.

11 Q. So why was he never interviewed?

12 A. I don't know that, sir.

13 Q. If the state police refused to interview Scott
14 Ballock, would that have been a violation of the policies
15 and procedures set out in Kief Exhibit Number 1?

16 A. I do not believe so, sir. No.

17 Q. Why not?

18 A. That would be a conversation topic between the
19 investigating officer and the prosecuting attorney.

20 Q. What I'm hearing you saying is that it would
21 have been up to Corporal Gaskins and Cindy Scott to
22 decide whether to accept Scott's offer to sit for an
23 interview about the communications he had with his
24 estranged wife?

1 A. I would proffer if Corporal Gaskins or the
2 prosecuting attorney, Cindy Scott, didn't feel like they
3 had enough evidence, they would have interviewed Mr.
4 Ballock.

5 Q. According to the policies and ---.

6 ATTORNEY JEFFRIES: Can we take a break?
7 He needs to make a call.

8 ATTORNEY CROOKS: Pardon?

9 ATTORNEY JEFFRIES: I believe Lieutenant
10 Kief needs to make a call.

11 ATTORNEY CROOKS: Yes, sir.

12 Okay.

13 I didn't know that. Sorry.

14 THE WITNESS: That's all right.

15 ---

16 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

17 ---

18 ATTORNEY CROOKS: Back on the record.

19 BY ATTORNEY CROOKS:

20 Q. When the state police investigate criminal
21 complaints, if the opportunity to question the suspect,
22 the accused, Defendant, is available, it's very unusual
23 for the state police to pass up that opportunity, isn't
24 it?

1 A. I don't know if I would call it unusual. It's
2 certainly up to the investigating officer. It depends on
3 the case.

4 Q. All right.

5 And if --- can you recall your personal
6 experience in the cases that you've worked. You've been
7 at this a long time. Can you recall having a Defendant
8 say, look, you know, I'll tell you what happened? And
9 you just passed that opportunity, said it's okay, don't
10 need it.

11 A. Off the top of my head, no, sir. I cannot
12 remember. No. No, I cannot say that I've had that
13 happen to me.

14 Q. Do you know whether, in fact, Corporal Gaskins
15 and Cindy Scott collaborated and came to a decision on
16 whether to question Scott Ballock?

17 A. No, sir. I do not.

18 Q. You'd have to ask Corporal Gaskins that?

19 A. Yes, sir.

20 Q. Now, he's sergeant.

21 Right?

22 A. Yes, he is.

23 Q. You're the lieutenant, but you're in Elkins, so
24 Gaskins no longer reports to you?

1 A. Correct. Yes, sir.

2 Q. Maybe he does?

3 A. On certain other aspects of state police, yes,
4 sir.

5 Q. Okay.

6 Maybe something to do with your what --- what
7 --- doesn't matter what my speculation might be. On what
8 aspect of police business does ---

9 A. I'm ---.

10 Q. --- Sergeant Gaskins report to you?

11 A. I'm the crime scene team coordinator for the
12 state police statewide. Sergeant Gaskins is the crime
13 scene team leader of Troop 1, so he does report to me in
14 that capacity.

15 Q. So if you're investigating a murder scene?

16 A. Sergeant Gaskins is the team leader in this
17 area.

18 Q. So he'd get --- he'd be the one to jump out of
19 bed and go --- go to a crime scene ---

20 A. Yes.

21 Q. --- and start coordinating?

22 A. Yes, sir.

23 Q. Okay.

24 I think I understand.

1 So in the course of the investigation of Ellen
2 Costlow's complaint against Scott Ballock, do you know if
3 the history between Ellen and Scott was given fair
4 treatment by Corporal Gaskins and Cindy Scott? Do you
5 have any opinion on that?

6 A. I'm not so sure I understand the question.

7 Q. You were kept advised by then Corporal Gaskins
8 as he moved through the process of investigating Ellen
9 Costlow's criminal complaint against Scott Ballock, her
10 estranged husband?

11 A. Yes, sir.

12 Q. Okay.

13 And that's what you told me?

14 A. Yes, sir.

15 Q. Corporal Gaskins wasn't just conferring with
16 you. He was collaborating with the assistant prosecutor,
17 Cindy Scott. That's what you told me also?

18 A. Yes, sir.

19 Q. Likewise, at the direction of Captain Merrill,
20 you at least understood that then Corporal Gaskins was
21 supposed to be keeping Captain Merrill advised of the
22 progress of the investigation?

23 A. Correct.

24 Q. So based on the ongoing process of briefing

1 you, can you tell me, did Scott Ballock get fair
2 treatment? Were his interests given adequate and fair
3 treatment, consideration, particularly in view of the
4 fact that policy of the West Virginia State Police is to
5 take special care when they're investigating another
6 member of the law enforcement community.

7 ATTORNEY JEFFRIES: Objection,
8 mischaracterizes the evidence.

9 BY ATTORNEY CROOKS:

10 Q. I mean, you told us that there's a policy
11 specifically addressing the investigation of other
12 members of the law enforcement community.

13 A. Yes, sir.

14 Q. That's why you had to get in touch with Captain
15 Merrill?

16 A. Yes, sir.

17 Q. Okay.

18 So in light of all that, was Scott Ballock
19 given fair consideration, and --- and fair treatment by
20 the West Virginia State Police in the way they
21 investigated and went about handling this complaint that
22 a woman in a divorce proceeding was making against her
23 estranged husband?

24 A. Yes, sir.

1 Q. You don't feel that it was unfair to Scott to
2 turn him down when he offered to come in, and --- and
3 tell his side of the --- of the case?

4 A. Again, sir, I did not know that.

5 Q. Are you aware that --- well, how long --- let
6 me ask you the question. How long after Scott was
7 arrested did it take before the charges against Scott
8 were resolved?

9 A. That was a couple years, I believe, sir.

10 Q. Actually, it was pretty close to three years.

11 A. I was going to say that, but I didn't --- I
12 knew it was over a couple.

13 Q. All right.

14 A. Yes, sir.

15 Q. Why'd it take that long?

16 A. The --- the magistrate that was assigned the
17 case, Magistrate Mullins, had some medical issues and he
18 was not doing his magisterial duties. And instead of
19 transferring that to another magistrate, it was kept in
20 front of Magistrate Mullins.

21 Q. Are you aware that ultimately the prosecuting
22 attorney dropped the charges against Scott Ballock?

23 A. Yes, sir.

24 Q. Did you agree with that?

1 A. No, sir.

2 Q. Why not?

3 A. We felt like we had enough to --- to go forward
4 with the trial.

5 Q. Is that fairly typical? I mean, it's not the
6 first time the prosecutors have disappointed the
7 investigating officers, is it?

8 A. No, sir.

9 Q. I mean, that sort of thing happens ---

10 A. It does.

11 Q. --- in the courthouse quite frequently.

12 Prosecutors exercise their discretion, and cut deals, and
13 drop charges, and the investigating officers are
14 disappointed.

15 True?

16 A. Correct.

17 Q. Now, in this case, during the course of the
18 investigation, Scott's father, Tom, was posting a lot of
19 things on the Internet, including things that were
20 unflattering about the West Virginia State Police.

21 True?

22 A. True.

23 Q. In fact, this is reflected by --- I don't know.
24 I don't have a page count, but a lot of material was

1 included in the --- the stuff I received from your lawyer
2 in March of last year in response to our discovery
3 request.

4 So it looks to me like the state police
5 included consideration of Tom Ballock's website in its
6 investigation.

7 A. No, sir.

8 Q. Is that true?

9 A. No, sir.

10 Q. All right.

11 Well, during the pendency of the criminal
12 charges against Scott Ballock after he was arrested, you
13 knew that Tom Ballock was posting things on the Internet,
14 kind of blogging or chronicling the case against his son.
15 You were aware of that.

16 Right?

17 A. Yes, sir.

18 Q. All right.

19 You also knew that Ellen Ruth Costlow had filed
20 a lawsuit against Tom Ballock in connection with that
21 activity?

22 A. I don't know if I knew that, sir. I knew at
23 one point, but I couldn't tell you when I knew that she
24 had filed a lawsuit. I --- I don't know that.

1 Q. Okay.

2 So did you ever try to provide any assistance
3 to Ellen Ruth Costlow in the course of her litigation
4 against Tom Ballock?

5 A. No, sir.

6 Q. Okay.

7 Why would you have all the emails that Tom
8 Ballock had sent to Ellen's father, Judd, why would those
9 be included in the files that were produced to us in
10 Discovery in this case?

11 A. She was asking why --- why Scott could be
12 arrested for harassment and not his father, Tom. Hey,
13 look at this. This is what he's doing now. This is what
14 he's posting now.

15 Q. What'd you tell her?

16 A. That that decision's not made --- that's not
17 made by me. There's a fine line between what he puts on
18 the Internet and how he's harassing her. Just because
19 it's on the Internet doesn't mean it's harassing.

20 Q. The implication of your answer suggests to me
21 that you felt that there could have been criminal charges
22 made against Tom Ballock?

23 A. I don't know that. Again, with the --- with --
24 - I don't know that. I don't know that. Could there

1 have been? I --- I'm sure there could've been, but
2 that's a gray area as far as I'm concerned with the
3 Internet and First Amendment rights and everything. I
4 --- I don't know that.

5 Q. A lot of the emails that were produced to us by
6 your Counsel were emails from Tom Ballock addressed to
7 Ellen Costlow's father, Judd.

8 A. I remember a few.

9 Q. Okay.

10 A. If ---.

11 Q. I said a lot, but I don't know. They were
12 lengthy. Maybe --- maybe there weren't so many as just
13 that each of them were so long.

14 But did you feel that those emails constituted
15 harassment under the West Virginia Criminal Code?

16 A. I don't believe I did, sir, no.

17 Q. Okay.

18 So it sounds like Ellen Costlow came to you. I
19 believe this is what you told me. You tell me if I'm
20 getting this right. She came to you and wanted to know,
21 hey, why can't I bring a criminal charge against Tom
22 Ballock because of what he's putting on the Internet, and
23 what he's writing to my father?

24 A. Yes, sir. Correct.

1 Q. Okay.

2 So did you just tell her, look, you need ---
3 you need to go talk to Corporal Gaskins and Cindy Scott?

4 A. Well, it depends on where she lived at the time
5 who would have venue over that.

6 Q. Okay.

7 How do you mean? What are you thinking of?

8 A. If she lived in Marion County, then she would
9 have to go report that to Marion County police agency.

10 Q. She did move Marion County at some point.

11 A. At one point in time, yes, sir.

12 Q. And in fact, she moved in with Kenny Ice,
13 Junior?

14 A. Yeah. I --- I have recollection of that, yes,
15 sir.

16 Q. Okay.

17 Kenny Ice, Junior, do you know anything about
18 him?

19 A. No, sir. I do not.

20 Q. Do you know if you ever investigated him, or if
21 anybody in --- in your barracks have ever investigated
22 his activities?

23 A. I have never investigated him. I do not know
24 if anybody in the barracks have ever investigated him.

1 Q. All right

2 Give me one second here.

3 ATTORNEY CROOKS: What are we up to now?

4 COURT REPORTER: Five.

5 ATTORNEY CROOKS: You good?

6 BY ATTORNEY CROOKS:

7 Q. Have you had a fair opportunity to review that
8 exhibit, Lieutenant?

9 A. Yes, sir.

10 Q. What is it?

11 A. It is our WVSP number 193. State police
12 complaint form. Report.

13 ---

14 (Whereupon, Deposition Exhibit 5,
15 Complaint Report, was marked for
16 identification.)

17 ---

18 BY ATTORNEY CROOKS:

19 Q. This is required by policy and procedures.
20 True?

21 Use of this form?

22 A. Yes, sir.

23 Q. Specifically, I'm referring to the criminal
24 investigative polices and procedures manual that's been

1 produced to us in discovery and marked as Kief Exhibit
2 Number 1 in todays' deposition.

3 A. Okay.

4 Q. Am I right?

5 A. Yes, sir.

6 Q. All right.

7 Take a look at page 853 of Deposition Exhibit
8 Number 1 for a second, would you?

9 A. I'm sorry. Got one.

10 Q. I'm looking at 3.02. Proper conduct of a
11 criminal investigation includes, but is not necessarily
12 limited to.

13 ATTORNEY JEFFRIES: Charles, I believe
14 you're on page 851.

15 ATTORNEY CROOKS: Am I?

16 All right.

17 BY ATTORNEY CROOKS:

18 Q. I apologize. Didn't mean to mislead you.
19 Thank you for the ---.

20 A. All right sir.

21 Q. Thank you for bracing me on that. Let me take
22 a fresh line of questioning. We've looking at page 851
23 of Kief Exhibit Number 1. I'm looking specifically at
24 3.02. Proper conduct of a criminal investigation

1 includes, but is not necessarily limited to --- are you
2 with me so far?

3 A. Yes, sir. Uh-huh (yes).

4 Q. I'm going to skip past some stuff that doesn't
5 pertain, and focus on parts that I believe do for
6 purposes of my question.

7 A. Uh-huh (yes).

8 Q. Sub-part (c) says locating and interviewing all
9 persons who have or who are thought to have any
10 information concerning the crime under investigation?

11 A. Yes, sir.

12 Q. Well, all persons who have information would
13 certainly include the person who's accused of sending the
14 harassing emails and texts ---

15 A. Yes, sir.

16 Q. --- wouldn't it?

17 A. Uh-huh (yes).

18 Q. So that means to say this policy and procedure
19 called for interviewing Scott Ballock.

20 A. Okay.

21 Q. True?

22 A. As it --- as it is written, yes, sir.

23 Q. So if Scott Ballock was offering to come in and
24 --- and sit for an interview by the state police and/or

1 the prosecutor's office, and they turned him down, then
2 they would have been operating in contradiction to this
3 directive in state police policy and procedure?

4 A. Yes, sir.

5 Q. Sub-paragraph (f) says that proper conduct of a
6 criminal investigation also includes, but is not
7 necessarily limited to, locating and questioning those
8 persons suspected of having committed the crime. I mean,
9 that's --- that's saying explicitly that Scott Ballock
10 should've been interviewed if the opportunity presented
11 itself, isn't it?

12 A. Yes, sir.

13 Q. And so if the state police and the person,
14 Corporal Gaskins, whether acting of his own accord or
15 under the direction of Cindy Scott, turned Scott down
16 when he volunteered to come in and give a statement, that
17 wouldn't be fair treatment to Scott, would it?

18 A. I don't know if I would characterize it as
19 that, sir. These are guidelines that we go by, not --- I
20 mean, it's policy and procedure. But the --- we have a
21 lot of leeway about how we conduct a criminal
22 investigation. It's certainly not something that they
23 would be written up or anything like that.

24 Q. A lot of the communications that were at issue

1 in the criminal charge for which Scott was arrested,
2 which was later withdrawn by the prosecuting attorney's
3 office, had to do with interactions that Ellen and Kenny
4 Ice, Junior were having. You've looked at those emails
5 enough to --- to know that I'm right about that?

6 Correct?

7 Kenny Ice comes up a lot.

8 A. I'm thinking that's a --- yes. Kenny Ice comes
9 up a lot, yes, sir.

10 Q. And so he would've been somebody who had
11 information concerning the crime under investigation.

12 True?

13 A. He would have knowledge of it, yes, sir.

14 Q. Do you know if Kenny Ice was contacted and
15 interviewed by Corporal Gaskins as part of the ---?

16 A. I do not know that, sir. I don't believe he
17 was.

18 Q. In fact, a lot of the claims hat Ellen Costlow
19 made against Scott and many of the subjects addressed by
20 Scott Ballock in his texts and emails to Ellen could've
21 been either corroborated or refuted by Kenny Ice if ---
22 if all the mentions of Kenny Ice are to be taken as
23 credible in those emails.

24 True?

1 He was in a position --- Kenny Ice, Junior was
2 in a position to either corroborate or refute a lot of
3 what Ellen Ruth Costlow was complaining of against my
4 client, Scott Ballock, in her criminal case that was
5 being investigated by the state police?

6 A. It depends on what time during that
7 investigation that was.

8 Q. What difference would the timing have? Kenny
9 Ice, Junior was identified repeatedly in those texts and
10 emails.

11 A. Right. He was also identified as working with
12 Scott during some of this, and ---.

13 Q. He did go to Scott Ballock. You --- you were
14 aware of that, too, didn't you?

15 A. I remember something about that, yes.

16 Q. What do you think of that?

17 A. I do not know about that, sir. That --- that
18 is --- I have no clue.

19 Q. What would've, you know, what --- I mean, you
20 were part of the investigative team. You were
21 collaborating with Corporal Gaskins. Did the two of you
22 have any conversation as to what in the world would Kenny
23 Ice, Junior want to go talking, probably, with Scott
24 Ballock and even go so far as to provide him his cell

1 phone?

2 A. Yeah.

3 Q. Why would he do that?

4 A. I don't know that, sir. Don't know that.

5 Q. Don't you think it would've been appropriate to
6 get in touch with Kenny Ice, Junior and ask him?

7 A. I don't think so, sir. No, sir.

8 Q. If Kenny Ice Junior was telling Scott Ballock,
9 look, you know, Ellen Costlow is lying about you. And
10 she's trying to hurt you with this criminal complaint,
11 and the cops are helping her trying to hurt you. They're
12 trying to get you fired from the FBI. Don't you think
13 that would've been information that the state police
14 should've at least taken into account and reported to the
15 prosecutor?

16 A. I don't know where Corporal Gaskins --- it's my
17 thought was on interviewing Kenny Ice. I would consider
18 him as an unreliable witness.

19 Q. You would?

20 A. Yes, sir.

21 Q. Why?

22 A. Because he had a romantic relationship with Ms.
23 Costlow.

24 Q. You regarded her as credible, didn't you?

1 A. What's that got to do with anything?

2 Q. Why would his romantic relationship with her
3 disqualify him as a credible witness?

4 A. Because he was also doing something with Scott
5 on the other hand.

6 Q. Yeah, but you had no understanding as to what
7 his motive was.

8 A. I didn't understand what his motive was. I
9 wasn't --- I wasn't conducting the investigation.

10 Q. Depending on what his motive was, he might've
11 been a credible witness.

12 A. Yeah, I don't --- I don't know that, sir.
13 That's ---.

14 Q. You wouldn't know unless you asked him, would
15 you?

16 A. Again, I don't know if I would've interviewed
17 him, sir. I don't know.

18 Q. In fact, that might've been one of the reasons
19 that the prosecutor gave up on their case against my
20 client and ---

21 A. I don't believe so.

22 Q. --- withdrew their motion, isn't it?

23 A. No, sir.

24 ATTORNEY JEFFRIES: Objection. Calls for

1 speculation.

2 BY ATTORNEY CROOKS:

3 Q. Are you aware that the criminal charges that
4 --- for which you obtained arrest warrants and executed
5 were not only withdrawn by the prosecutor, but they were
6 expunged by the Circuit Court?

7 A. I did not obtain criminal charges against
8 Scott.

9 Q. Were you --- you signed off on the executed
10 warrants, didn't you?

11 A. Correct.

12 Q. Maybe I misspoke there.

13 A. Yes.

14 Q. You --- you didn't personally obtain those
15 warrants?

16 A. No, sir.

17 Q. That would've been Corporal Gaskins?

18 A. Right.

19 Q. You executed the arrest warrants?

20 A. Correct.

21 Q. I'm sorry. I apologize.

22 A. That's all right.

23 Q. I didn't mean that. I don't want ---

24 A. There's two different things.

1 Q. ---- I don't want to --- yeah. I don't want to
2 misrepresent what ---.

3 A. Yeah. There's two different things there.

4 Q. Yeah. Your --- just another case of your
5 careful attention to my questions. Thank you.

6 You interviewed Ellen Costlow at the detachment
7 in Morgantown the night before you executed the warrants
8 and arrested Scott?

9 A. I interviewed her, sir?

10 Q. Yeah.

11 A. Okay.

12 I don't remember that.

13 Q. You don't remember doing that?

14 A. No, sir.

15 Q. You don't remember having a discussion with her
16 saying look, you know, we got these warrants. I'm going
17 to execute them tomorrow. What time is your hearing?
18 What time do I need to be there? How did you know?

19 A. I don't believe Ms. Costlow knew we were going
20 to serve those warrants on him that day. It's my
21 recollection we did not tell her.

22 Q. You did not tell her?

23 A. Correct.

24 Q. Okay.

1 A. We knew that there was a hearing the next day.

2 Q. How did you know that?

3 A. I can't remember how we found out the
4 conversation of how we knew that there was going to be a
5 court hearing the next day.

6 Q. Did you assign Corporal Gaskins, or was that
7 Captain Merrill?

8 A. We discussed having Corporal Gaskins do the
9 investigation.

10 Q. Did you ever interview Ellen Costlow without
11 Corporal Gaskins being present?

12 A. The first time I met Ms. Costlow, the night
13 --- the first night of her asking about the affair. I
14 don't remember having another interview with her. I
15 can't --- I can't recall, sir. I do not know.

16 Q. Did you ever make any recordings of interviews
17 that you conducted with Ellen Costlow?

18 A. I don't remember any, sir, no.

19 Q. Have you ever done that sort of thing in the
20 course of criminal investigations?

21 A. Sure.

22 Q. How about criminal investigations where another
23 member of law enforcement is at issue? Don't you think
24 making a recording of interviews with the complaining

1 witness would help in keeping Captain Merrill advised?

2 A. I don't know if I've interviewed a complaining
3 victim, sir. I don't know if I've ever done that before.
4 I've done suspects, but not victims.

5 Q. If Scott Ballock had been interviewed as he
6 offered, and he waived his Fifth Amendment privilege,
7 answered questions, he could have potentially put the
8 rope around his own neck and admitted to criminal
9 activity.

10 True?

11 A. He could have, yes, sir.

12 Q. Wouldn't that have been a good reason to
13 interview him? Doesn't that argue that he would be a
14 credible witness worthy of interviewing in the course of
15 the investigation?

16 ATTORNEY JEFFRIES: Objection. Scott is
17 not with us.

18 BY ATTORNEY CROOKS:

19 Q. If the man is willing to risk his career, and
20 --- and go on to jail to answer questions, doesn't that
21 argue in favor of bringing him and interviewing him?

22 A. Corporal Gaskins did not feel like he needed to
23 interview Mr. Ballock for a reason. I do not know that
24 reason.

1 Q. Did you ever indicate that you had tried to
2 tape record an interview with Ellen Costlow, but that the
3 recording machine malfunctioned?

4 A. I remember that on a website someplace. I
5 don't recall what that circumstance was. But I remember
6 reading that on one of his websites. But I don't recall
7 the circumstances.

8 Q. You received quite a few emails directly from
9 Ellen Costlow during the course of this investigation.
10 True?

11 A. True.

12 Q. And that was even after Corporal Gaskins had
13 been appointed as the investigating officer?

14 A. True.

15 Q. Did you ever tell Ellen Costlow, look, I'm not
16 the chief investigating officer on this? You should be
17 communicating with Corporal Gaskins?

18 A. No, sir.

19 Q. Why not?

20 A. Couple different things.

21 Q. Why would you have back channel communication
22 with the complainant when somebody else is investigating?

23 A. They're really --- Ms. Costlow was --- her
24 emails are, basically, somebody that wants somebody to

1 listen to her and asking questions. Corporal Gaskins was
2 doing the investigation. I kind of fielded emails from
3 her, and I believe she also sent Corporal Gaskins emails
4 also. But it was both of us that she sent emails to.

5 Q. Do you recall telling Ellen Costlow in one of
6 your emails that the assistant prosecutor just didn't
7 understand Tom Ballock's mental illness?

8 A. Yes, sir.

9 Q. What was that about?

10 A. After reading and getting exploited on the
11 Internet, personally, by Tom, it's just not normal.
12 There's --- there's something wrong. There's --- you
13 know, I'm no expert on mental illness or anything like
14 that, but I know normal. That's not normal.

15 Q. So you're saying that you personally were
16 mistreated by Tom Ballock on his website?

17 A. Correct.

18 Q. Did you ever have any communication with him,
19 and tell him, look, you need to stop posting this
20 information?

21 A. I believe the state police did.

22 Q. Who in the state police?

23 A. I don't know that. He was sent some letter
24 regarding that.

1 Q. Do --- strike that.

2 Are you aware that Tom Ballock gave an
3 interview to the FBI about his website?

4 A. No, I do not.

5 Q. Was there ever any criminal charge made against
6 Tom Ballock in connection with his website and the things
7 he put on there?

8 A. No, sir

9 Q. Are you aware that Ellen Costlow dropped her
10 civil lawsuit against Tom Ballock ---

11 A. No, sir.

12 Q. --- in connection with the website that he
13 maintained?

14 A. No, sir.

15 Q. Did you have any conversations with anybody at
16 the prosecutor's office about Tom Ballock and the things
17 he was putting on the Internet on his website? You said
18 that they didn't understand his mental illness, so I'm
19 trying to find out what the basis for your opinion is.

20 A. I can't remember specifically who I spoke with,
21 but we were going through the whole harassment, not
22 harassment, intimidation, retaliation conversation.

23 Q. You're aware that the local forensics
24 psychiatrist, Dr. Christi Cooper-Lehki, performed an

1 investigation and reported to the family court judge
2 concerning her opinion on child custody?

3 A. I know of a report authored by that person.
4 What that report is regarding to, I have no clue.

5 Q. Okay.

6 And how do you know about that report?

7 A. It's come up in several conversations through,
8 I think, Mr. Ballock's deposition. He --- he referred to
9 that. I knew there was a report. I knew it was in civil
10 court. That's all I knew of it though.

11 Q. You were aware that Scott Ballock tried to get
12 the family court to unseal that report so that he could
13 use it in his defense in the criminal case?

14 A. I believe she told me that, yes.

15 Q. Who told you that?

16 A. I believe Ms. Costlow told me that.

17 Q. Okay.

18 Are you aware that the assistant prosecutor,
19 Cindy Scott, went to the family court hearing and argued
20 against allowing Scott to use that report?

21 A. I believe so.

22 ATTORNEY JEFFRIES: Objection,
23 mischaracterizes the evidence.

24 BY ATTORNEY CROOKS:

1 A. I believe I knew that, Yes, sir. I --- I
2 remember something about that.

3 Q. Okay.

4 How'd you find out about that?

5 A. I can't remember that, sir. I don't ---.

6 Q. Ellen Costlow?

7 A. It could've been her, or it could be through
8 Cindy Scott, or --- or Corporal Gaskins at the time.

9 Q. What was --- what was your reaction when you
10 learned that Scott was denied the permission to use Dr.
11 Christi Cooper-Lehki's report in his own defense ---

12 A. I would ---.

13 Q. --- against the charges that Ellen Costlow
14 initiated against him?

15 A. I --- I believe I was happy for her because she
16 --- she acted happy that she had finally won something,
17 that she had finally thought that she garnered some ---
18 she won a court case or opinion or whatever. She --- she
19 --- actually, was one of the few times I saw, you know,
20 her be not excited about something, but not happy about
21 something, but she --- a positive content to her.

22 Q. Do you remember using language to the effect
23 that Scott must have had his tail between his legs as he
24 left court at the end of that hearing?

1 A. Again, I probably did say that. Or I did say
2 that. But that was just in regard for --- to embellish
3 her to --- she finally won one, and I was just, you know,
4 happy about just garnering her ---.

5 Q. Do you think that that was consistent with your
6 obligation under policy and procedure to maintain
7 impartiality with respect to a matter that wasn't even
8 part of your official duties?

9 A. Impartiality concerning ---?

10 Q. Yeah. I mean, you weren't investigating
11 anything in connection with the family court case?

12 A. Correct.

13 Q. You were participating to some degree in the
14 criminal case against Scott. And Scott was trying to get
15 evidence to defend himself against those charges, and you
16 were pretty happy that he failed in that effort, weren't
17 you?

18 A. My disdain for Scott and his dad had come with
19 harassments and emails. Not --- harassments and
20 websites.

21 Q. Okay.

22 So you do harbor ill feeling toward my client?

23 A. For --- yes, sir. I do.

24 Q. Likewise, you harbor a feeling toward Scott's

1 father?

2 A. Correct.

3 Q. And that ill feeling is borne of things that
4 Scott's father was posting on the website about the case
5 against his son, including references to you personally?

6 A. Correct.

7 Q. Just want to make sure I understand.

8 Now, you were interviewed by the FBI.

9 A. There was a meeting with the FBI, sir.

10 Q. Okay.

11 You had a meeting?

12 A. Yes, sir.

13 Q. All right.

14 Well, I ---

15 A. An interview.

16 Q. --- appreciate your sense of caution in
17 answering my question, but the fact is, you had a
18 communication, face-to-face communication with somebody
19 from the FBI?

20 A. Correct.

21 Q. Okay.

22 When was that?

23 A. Which one?

24 Q. Well, okay. Maybe that's a more appropriate

1 question. How many different times?

2 A. I remember two specifically.

3 Q. Okay.

4 A. Once when the FBI came to review the emails and
5 text messages.

6 Q. Okay.

7 Those would be the emails and text messages
8 that the state police obtained from Matt Stout, one of
9 the lawyers represented Ellen Ruth Costlow?

10 A. Correct.

11 Q. Okay.

12 Did you have any other emails other than the
13 ones you obtained from Mr. Stout?

14 A. I don't know that, sir. I can't remember if I
15 did or not. If we did ---.

16 Q. Well, Ellen Costlow shared a lot of stuff with
17 you, right?

18 A. I can't --- I remember the disc --- yes. Yes,
19 sir. Yes, sir. Yes. Yes, sir.

20 Q. So, you know, your collection of evidence came
21 from the magnetic disc that Mr. Stout provided as well as
22 a series of emails forwarded to you by Ellen Costlow?

23 A. I don't know if they forwarded to us or if she
24 had them printed out. I can't remember that.

1 Q. Well, ---

2 A. I can't ---.

3 Q. --- I don't know that the difference ---

4 A. True.

5 Q. --- comes to that much. But those are the two
6 sources that you were operating with?

7 A. Yes, sir.

8 Q. So when the FBI came, that's what you shared
9 with them?

10 A. They looked at the --- the content of the ---
11 of the text and emails.

12 Q. Did they talk to you about the investigation?

13 A. No, not really, sir.

14 Q. Did they ask you any questions?

15 A. Not that I can recall. I --- I remember him
16 coming and looking at the discs, and having the emails.
17 But I --- as far as talking to us about what happened or
18 what was going on, or with the case, no. The only thing
19 we knew that they --- they told us was if, unless Mr.
20 Ballock was found guilty in court, that he would keep his
21 job.

22 Q. Okay.

23 How many people were present there from the
24 FBI?

1 A. I believe just one.

2 Q. Just one?

3 A. That ---.

4 Q. Do you remember the name?

5 A. I believe it was John Hamrick.

6 Q. John Hamrick?

7 A. Yes, sir.

8 Q. Okay.

9 I know that name.

10 So Mr. Hamrick --- well, strike that.

11 Agent Hamrick told you that, you know, unless
12 Scott was found guilty in the criminal case, he would
13 keep his job?

14 A. Sure.

15 Q. All right.

16 That statement was apropos of what? Did ---
17 did you ask him?

18 A. I don't know how that conversation came about.
19 It's been a long time ago. I'm sure we don't know the
20 relationship between state charges and the federal
21 government, and how that worked. I don't know how that
22 conversation came about, sir.

23 Q. Was anybody from your state police headquarters
24 present when Agent Hamrick was present the first time to

1 look at the emails?

2 A. No, sir. I believe it was just --- no, sir.
3 Uh-uh (no). No.

4 Q. Are you the person in the highest authority
5 from the West Virginia State Police present when Agent
6 Hamrick came and looked at the evidence that was part of
7 the state police investigation into Scott Ballock's
8 communications with Ellen Costlow?

9 A. I believe so, sir.

10 Q. Okay.

11 Was anyone from the Monongalia County
12 prosecuting attorney's office present at that time?

13 A. Not that I can remember.

14 Q. So the members of the West Virginia State
15 Police present when Agent Hamrick came would've been you
16 and Corporal Gaskins?

17 A. Yes, sir.

18 Q. Anyone else?

19 A. I don't believe so, sir.

20 Q. Did you provide copies of any investigative
21 product to Agent Hamrick?

22 A. I believe he took a copy of the disc.

23 Q. All right.

24 So a copy of the disc was turned over?

1 A. I believe so. Yes, sir.

2 Q. Okay.

3 Well, we've established that there was also
4 some other email that you'd receive in either printed-off
5 form or via email from Ellen Costlow. How about that
6 stuff? Was any of that given to Agent Hamrick?

7 A. I would believe it would have been, sir. I
8 don't specifically remember that, but I believe it would
9 have been.

10 Q. Okay.

11 Was Agent Hamrick at all interested in the
12 website that Tom Ballock was ---

13 A. I can't remember that, sir.

14 Q. --- operating?

15 Okay.

16 You don't think --- you don't remember?

17 A. I don't remember that, sir. I don't.

18 Q. Do you remember having any discussion with him
19 about it?

20 A. No, sir. I do not remember.

21 Q. So you don't remember what it was that prompted
22 Agent Hamrick to tell you that, look, you know, unless
23 Scott gets convicted of this, he's not going to lose his
24 job?

1 A. Correct. Right.

2 Q. How did you take that? Were you surprised?

3 A. No, sir. I wouldn't say I was surprised if it
4 was --- I wasn't surprised or --- it was --- I don't know
5 how they operate. So that was --- I don't know their
6 thoughts behind that. I don't know.

7 Q. This was an internal FBI matter, and you had no
8 information or expectation as to what his answer to that
9 question was going to be?

10 A. Correct. Yes, sir. Yes, sir. I don't know.

11 Q. Was --- was your disdain for Scott Ballock such
12 by that point that you were disappointed to hear that he
13 would keep his job unless he got convicted of these cases
14 that you were investigating against him?

15 A. No, sir. I'm not even so sure if the website
16 were up at that time. This was pretty early in the
17 investigation.

18 Q. There was a second time that you communicated
19 with the FBI?

20 A. Yes, sir.

21 Q. Okay.

22 Tell me about that.

23 A. After the investigation was over with, after
24 the court was over with, they contacted and wanted to

1 have a meeting.

2 Q. Okay.

3 Was it Hamrick again?

4 A. I didn't --- no. I believe he was retired by
5 that time.

6 Q. Okay.

7 Who was it?

8 A. It was another John. I'm sure I'll remember
9 his name here shortly.

10 Q. Large?

11 A. No. It's --- could've been. Could've been
12 John Large. Could've been. There was another --- I
13 can't remember.

14 Q. Okay. All right.

15 So just one or two people? Do you know?

16 A. I can't remember that, sir.

17 Q. Where did the interaction take place?

18 A. I believe it was up in the state police
19 barracks up in the conference room.

20 Q. Same place where Hamrick was shown
21 investigative material?

22 A. No. We were down in the sergeants' room at
23 that point.

24 Q. Okay.

1 A. I remember being in that room, yes, sir.

2 Q. Okay.

3 So you met upstairs in the conference room with
4 an FBI agent on the second occasion. This was after the
5 prosecutor had withdrawn the charges against my client?

6 A. Yes, sir.

7 Q. You've already told me that you were
8 disappointed that the prosecutor dropped the charges
9 against Scott. Did you ask the FBI agent who you met
10 with in the conference room what was going to happen with
11 Scott's job?

12 A. No, sir.

13 Q. You were already satisfied after talking to
14 Hamrick on the first occasion that he was probably going
15 to keep his job?

16 A. That's what we were told, sir.

17 Q. So what --- what did you tell the agent in the
18 conference room meeting?

19 A. He had questions on some of the stuff that we
20 uncovered during the investigation or that Corporal
21 Gaskins uncovered during the investigation.

22 Q. Like what?

23 A. Certain instances, what had happened during
24 different times of their going through emails. I can't

1 remember specifically what the --- what the content was,
2 but he asked us questions of --- I believe the ammunition
3 came up in that conversation, about what we found as far
4 as details about what Ms. Costlow had said, certain
5 things to that nature.

6 Q. Were you surprised that the FBI was still
7 asking questions? After all, Hamrick told you that if he
8 didn't get convicted, he wasn't going to lose his job.

9 A. I don't know if it was a surprise. It was just
10 we didn't know what they wanted in the meeting.

11 Q. Okay.

12 Well, certainly, by the time of your second
13 meeting with the FBI, after the criminal case against
14 Scott had been dropped, Tom Ballock had been posting
15 things on the Internet for quite some time?

16 A. Correct.

17 Q. I take it then that your disdain for my client
18 and his father was running pretty high, particularly
19 after the criminal case had been dropped against him.

20 True?

21 A. I had disdain for --- for both of them, yes.

22 Q. And seeing the criminal case withdrawn probably
23 made it somewhat worse?

24 A. I don't think that's --- I've had those ---

1 after 25 years, if the prosecutor wants to do something
2 then, you know, we --- there's not a lot we can say about
3 it.

4 Q. Were you encouraged that perhaps there might
5 yet be some risk for Scott's employment with the FBI?
6 After all, you were having this second meeting with the
7 FBI, and they were asking a lot of questions.

8 A. Yeah. I didn't know what the meeting was
9 about, sir. I really didn't. They were asking questions
10 about, you know, things that, again, found in the
11 investigation.

12 Q. Did you ask them why are you here? What --- I
13 thought this was all over?

14 A. I don't think we came out specifically and
15 asked them. I mean, that's --- it's a meeting they ---
16 they asked for. And it's been my experience with ---
17 with the FBI that they'll tell you about as much as you
18 want to know --- they'll tell you about as much as they
19 want you to know. I'm sorry.

20 Q. Okay.

21 A. My bad. You looked at me kind of strange, and
22 I was like --- yeah.

23 Q. There's a --- I would assume.

24 A. As much as they want you to know.

1 Q. Yes. Right. Understood.

2 Okay.

3 So these two discussions with FBI agents, were
4 those the only contacts that you had personally with the
5 FBI?

6 A. You mean on the phone, or in person, or ---?

7 Q. Well, let's go with in person first.

8 A. I believe so, sir.

9 Q. There was any face-to-face contacts ---?

10 A. I can remember --- yes. Yes, sir.

11 Q. Did you have telephone contact in addition to
12 that?

13 A. Yes, sir.

14 Q. Were they anything more than just arrangements
15 to, you know, meet with them?

16 A. Yes, sir.

17 Q. They were?

18 A. Yes, sir.

19 Q. They were substantive discussions?

20 A. Yes, sir.

21 Q. How many were there?

22 A. I can remember one.

23 Q. You remember one, but do you --- do you know if
24 there was more than one?

1 A. I don't remember if there was more than one,
2 sir.

3 Q. When was this one substantive telephone
4 discussion with the FBI that you can recall?

5 A. After Mr. Ballock showed up at the state police
6 barracks.

7 Q. Okay.

8 This would be after Scott Ballock came to the
9 police barracks in an effort to try and serve the summons
10 and complaint that was filed in this civil action?

11 A. He wasn't there to serve us, sir.

12 Q. What was he there for?

13 A. He was there to give us the information because
14 it was going to be on the news the next day.

15 Q. And you know that because you talked to him?

16 A. I knew that because I was on the phone with the
17 Secretary at that point.

18 Q. You had no direct communication with Scott that
19 day?

20 A. No. He was there when I was on the phone with
21 the Secretary.

22 Q. All right.

23 You --- let's say, by that time you were ---
24 you were in an office ---

1 A. Yeah.

2 Q. --- meeting?

3 A. Yes, sir.

4 Q. Are you aware that the family court ordered
5 Ellen Costlow not to have any communication with the FBI
6 about Scott?

7 A. No, sir. I do not know that.

8 Q. She never told you that there was an order
9 entered?

10 A. I can't remember, sir. I don't --- I can't
11 remember if that fact came up.

12 Q. Did you ever tell Ellen that you were going to
13 meet with the FBI, and that you would --- you wanted to
14 know what she would like you to tell them?

15 A. I remember a conversation with Ellen. I didn't
16 know why the FBI was coming. And there was so much that
17 happened with this case, and so many scenarios, and so
18 many incidents. That was basically to jog my memory if
19 I'm --- if I'm not remembering something huge or correct
20 --- incorrect or something that was --- was pretty
21 relevant.

22 Q. So you did ask Ellen Costlow to tell you if she
23 had any suggestions for what she wanted you to tell the
24 FBI?

1 A. Just to jog my memory, yes, sir.

2 ATTORNEY CROOKS: Let's take a short
3 break. I want to look over some of my stuff here, and
4 assess and I owe you the forecast here.

5 ---

6 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

7 ---

8 ATTORNEY JEFFRIES: We can go on the
9 record here.

10 Lieutenant, a document marked Exhibit 6
11 has been examined by everybody, and you have it in front
12 of you now.

13 ---

14 (Whereupon, Deposition Exhibit 6, Domestic
15 Violence Report, was marked for
16 identification.)

17 ---

18 BY ATTORNEY CROOKS:

19 Q. Can you identify that?

20 A. That's a domestic violence, what we normally
21 call a 195, given to --- excuse me, victims or alleged
22 victims of domestic violence. It just tells them how to
23 obtain a domestic violence protective order, go to a
24 shelter if they feel abused or threatened.

1 Q. Sure.

2 A. It just gives them information how to seek
3 assistance.

4 Q. I think I understand that. That particular
5 document, there are some signatures. Can you identify
6 them or at least one signature?

7 A. I --- I do not. I can't read that signature,
8 sir.

9 Q. Okay.

10 A. I don't know who that is.

11 Q. I believe it's Ellen Costlow's signature.

12 A. I would say that because she's marked as the
13 victim, so I would say she would sign that she received
14 this report --- this form, but I can't read her
15 signature.

16 Q. Just so our record is clear enough here,
17 Exhibit 6 is a form that West Virginia State Police
18 routinely provide to people who need it in connection
19 with domestic violence. This particular one identifies
20 Ellen Ruth Costlow.

21 A. Ellen Ballock. I'm sorry.

22 Q. She went by Ellen Ballock prior to the
23 completion of the divorce. I didn't mean to confuse
24 things on that.

1 All right.

2 So anyway, Ellen Ballock is identified on the
3 form, and then there's a signature at the bottom which
4 I'll represent to you is her signature. What else has
5 been completed on that form?

6 A. Completed, sir? The suspect's --- suspect name
7 is circled as Scott ballock, and then it has the date of
8 September 5th, 2013, and the time is 10:40 hours.

9 Q. September 5th, 2013?

10 A. I think it's the 5th. I think it's --- I think
11 that's what it says, sir. September 5th, 2013. I
12 believe that's what it says.

13 Q. So that'd be a little more than a week before
14 you arrested Scott Ballock?

15 A. Correct.

16 Q. So would it be a fair surmise that you showed
17 this form to Ellen Costlow a little more than a week
18 before you arrested her husband, and suggested that she
19 might enlarge upon her complaint against Scott by
20 including allegations of physical abuse?

21 A. No, sir. I --- I don't believe I've seen this.
22 That's not my handwriting at the top of the form.

23 Q. Okay.

24 Who is it at the state police who writes in

1 that fashion? Can you identify it from past ---?

2 A. I believe it's Corporal Gaskins. I'm not 100
3 percent sure, but that --- that's not my handwriting.

4 Q. Did Ellen Costlow, or Ellen Ballock at the
5 time, ever tell you that Scott physically assaulted her
6 in any form?

7 A. Sure.

8 Q. She told you this?

9 A. That she's been abused, sir. Yeah.

10 Q. Okay.

11 So why didn't you initiate one of these forms
12 with her?

13 A. She wasn't making a complaint. She just was
14 offering it into part of the investigation that she's
15 been assaulted.

16 Q. She did?

17 A. Specifically with --- with his weapon.

18 Q. Okay.

19 Did you tell her that that could well form the
20 basis for a separate criminal complaint?

21 A. No, sir.

22 Q. Why not?

23 A. It was sexual in nature. I didn't --- we
24 didn't know the circumstances of such.

1 Q. Why didn't you ask her?

2 A. Well, we asked her if it was wanted, and she
3 said no.

4 Q. So it was nonconsensual sex, too?

5 A. Well, ---.

6 Q. Rape is, I believe, what civilians call it.

7 A. I --- I don't know that, sir. She said it was
8 unwanted, but ---.

9 Q. You didn't believe her?

10 A. It's not that I didn't believe her, sir. Not
11 at all. It was a sexual activity she mentioned. She
12 didn't really give a lot of details about it.

13 Q. Well, I mean, she was a cooperative
14 complainant. She --- she volunteered this information to
15 you. What held you back from questioning her in greater
16 depth and proceeding with a case for sexual assault
17 against Scott Ballock?

18 A. I really don't remember if we offered that to
19 her, or if she wanted to make a complaint or not. I
20 don't remember that.

21 Q. Is that sort of thing written down anyplace
22 that you could retrieve it, and look at it, and refresh
23 your memory of why that would ---?

24 A. I don't know that, sir. I do not --- I do not

1 know that, sir.

2 Q. Would information of that kind ordinarily be
3 noteworthy, essentially, to be written down in the course
4 of a criminal investigation?

5 A. I don't know if --- what kind of credence we
6 gave it at the time. I don't --- I don't know that.

7 Q. You didn't find it credible?

8 A. I don't --- I can't remember what context it
9 was given, so I really can't answer your question about
10 that.

11 Q. Have you ever read the report written by Dr.
12 Christi Cooper-Lehki?

13 A. No, sir.

14 Q. You sound pretty confident.

15 A. Oh, yeah.

16 Q. Were you interested to read it?

17 A. No, sir.

18 Q. Did it occur to you that it might shed relevant
19 evidence on the investigation that carried on for close
20 on three years against my client?

21 A. No, sir.

22 Q. Have you ever talked with the forensic
23 psychiatrist, Dr. Christi Cooper-Lehki?

24 A. No, sir.

1 Q. Let me ask you, have you interviewed anybody
2 other than Ellen Ruth Costlow about her criminal case
3 against my client Scott Ballock?

4 A. I don't believe, sir, not that I can remember.
5 Interview? I don't believe so, sir.

6 Q. Interview is used in the context of your
7 policies and procedures which are marked as Kief Exhibit
8 Number 1.

9 A. Not that I can remember, sir.

10 Q. In light of the fact that there's a discrete
11 policy that speaks to investigations affecting public
12 figures as well as other members of law enforcement,
13 don't you think it would've been a good idea to interview
14 somebody other than just Ellen Costlow, someone you
15 didn't even believe to be a credible complainant about
16 sexual assault?

17 A. I never said she wasn't credible, sir.

18 Q. Well, you took no action on her telling you
19 that she'd been sexually assaulted by Scott Ballock.

20 A. Again, I don't --- I do not remember what
21 context that was in. I don't remember that.

22 Q. What context could possibly explain it other
23 than you just didn't believe her?

24 A. It was abnormal, yes, but again, I can't answer

1 your question.

2 Q. Why not?

3 A. Again, I don't know what the context of it. I
4 can't remember the context of the conversation.

5 Q. You mean to say you can't remember if this was
6 consensual sex that went too far, or I mean ---?

7 A. I would --- I would say that. Yes, sir. Yes,
8 sir. I don't know. I don't know that.

9 Q. Do you remember ever having any conversations
10 with Corporal Gaskins about whether a separate
11 investigation on domestic violence, sexual assault,
12 should be opened?

13 A. No, sir. I do not remember a conversation.

14 Q. Okay.

15 Do you know if Corporal Gaskins followed the
16 instructions he received from Captain ---

17 A. Merrill?

18 Q. --- Merrill, thank you, and provided routine
19 regular updates on the investigation?

20 A. I don't know that, sir.

21 Q. Would it have been part of your responsibility
22 as Corporal Gaskins immediate supervisor to see to it
23 that he complied with Captain Merrill's directive?

24 A. I wouldn't have checked up on that, sir. No,

1 sir, unless the Captain spoke to me directly about that
2 issue.

3 Q. Did Captain Merrill ever pick up the phone and
4 call you and say, look, I don't want to put it in
5 writing, but you can tell Gaskins he can stop --- he can
6 stop reporting to me about this investigation?

7 A. Not that I remember, sir.

8 Q. In the course of this investigation, were you
9 harboring any concern that perhaps a lawsuit of the kind
10 that brings us together here today might be the result of
11 this criminal case?

12 A. I'm sorry, sir?

13 Q. In the course of your investigation into my
14 client, Scott Ballock, did you harbor any concern that
15 you might get sued by Scott Ballock if the case didn't
16 stick?

17 A. I don't know if it was a concern. It was ---
18 it was a thought that we might get sued.

19 Q. Okay.

20 When did that thought come into your discussion
21 between you and the prosecutor's office?

22 A. I don't believe we ever discussed --- hold on a
23 second. It was --- Mr. Ballock's attorney had brought up
24 that issue.

1 Q. Explaining that he ---?

2 A. He had -- he had brought it up to, I believe,
3 Cindy Scott, that Scott was --- there was some sort of
4 discussion about him filing a civil suit against the
5 state police. That was through --- Mr. Bittinger,
6 Benninger?

7 Q. You're close, Benninger. It's all right. My
8 client ---.

9 A. Yeah. That was the conversation between him
10 and Cindy Scott, which ---.

11 Q. She shared that with you?

12 A. Correct, yes.

13 Q. She came back and said Mike Benninger says
14 Scott Ballock is going to sue you when this was all over?

15 A. I don't know if she said that directly. She
16 just --- the next time we saw her, she made a comment
17 that that was --- that was the topic that was brought up.

18 Q. Okay.

19 So what did --- what was your response to that?
20 What we going to do about it?

21 A. No, sir. There's no ---.

22 Q. You didn't ask her what can we do about it?

23 A. I've been sued before.

24 Q. Okay.

1 A. It was a nonissue for me.

2 Q. What did you get sued for?

3 A. I can't remember what the suit was about, sir.
4 It was one of those things where it was filed, and it was
5 not timely submitted, so it was thrown out. I can't
6 remember.

7 Q. Use of force case, maybe?

8 A. No, sir. No, sir, not at all.

9 Q. Okay.

10 I just started there because that's the most
11 common sort of thing that ---

12 A. I understand.

13 Q. --- police officers get sued for.

14 I know you got accused of threatening to shoot
15 a man's dog one time.

16 A. I think so, yes, sir.

17 Q. You remember that?

18 A. I did remember that, yes.

19 Q. In fact, ---

20 A. It could've been over there.

21 Q. --- Criminal Affairs came to see you about ---.

22 A. Could've been over that case. I don't remember
23 specifically, but it could've been over that case.

24 Q. You never shot anybody's dog, did you?

1 A. No, sir. No, sir.

2 Q. You never threatened to shoot a dog, did you?

3 A. No, sir. At all, no.

4 Q. You didn't strike me as the kind of guy that
5 would do that.

6 All right.

7 So the motion to drop the criminal case against
8 Scott Ballock, there was a document attached to it. Were
9 you aware of that?

10 A. Document attached to ---?

11 Q. The motion. The prosecutor filed a motion ---.

12 A. There was only one motion.

13 Q. There's a document attached to it ---

14 A. Okay.

15 Q. --- on my end, but ---.

16 A. I --- the court. I got you. Okay. Yes, sir.

17 Q. All right.

18 There was a number of things mentioned in
19 there. One of them had to do with probable cause for the
20 arrest.

21 A. Correct.

22 Q. Do you have any memory of that?

23 A. I --- I remember something about that, sir.
24 Yes, sir.

1 Q. Do you remember talking with the prosecutor's
2 office about why the prosecutor would want to have Scott
3 sign off on something like that?

4 A. No, sir.

5 Q. Did it perhaps come into the discussion that
6 you had with Cindy Scott about the potential for being
7 sued after the case --- the criminal case was dismissed?

8 A. No, sir.

9 Q. You ever heard the term malicious prosecution?

10 A. I've heard the term, yes.

11 Q. Do you know what it means?

12 A. Not definition-wise, no, sir.

13 Q. Do you know what the term abuse of process
14 means?

15 A. Not by definition, sir. No.

16 Q. Do you know what the term defamation means?

17 A. Again, sir, ---.

18 Q. When you went to the police academy, they ever
19 bring any prosecutors in there to talk about legal
20 liability for police officers, what you could be sued
21 for?

22 A. Not specifically. We had certain domestics and
23 all that good stuff about the --- being civil liability
24 for things to that nature. But I don't remember specific

1 class on any of that, no, sir.

2 Q. Being told about domestics? What do you mean?

3 A. There was a certain --- if we conduct ourselves
4 in a certain manner, we can be held accountable for it.

5 Q. Okay.

6 Can you be any more specific?

7 A. Going above and --- I can't remember, sir. I
8 really --- I can't remember what the specifics of that is
9 without reviewing it. There's something in the domestic
10 part.

11 Q. You ever receive training on, say, racial
12 profiling?

13 A. I think during one in service we did receive a
14 class of racial profiling, so yes.

15 Q. All right.

16 Well, is there --- is there an in house
17 attorney for the state police?

18 A. Yes, sir.

19 Q. Do they employ a lawyer?

20 A. Yes, sir.

21 Q. Who is it?

22 A. I don't know who that is right now, sir.

23 Q. Was the in-house attorney for the state police
24 ever consulted in the course of the Ballock

1 investigation?

2 A. Not --- I do not know that, sir.

3 Q. So he or she may have been?

4 A. They were aware of the websites.

5 Q. Did Ellen Ballock ever tell you during the
6 course of the investigation of her estranged and,
7 ultimately, her ex-husband, Scott Ballock, that she hoped
8 and wanted him to lose his job at the FBI?

9 A. Not that I can remember, sir.

10 Q. Is just now the first time that it ever
11 occurred to you that she may have been motivated to try
12 and cost Scott his job at the FBI?

13 A. We cautioned her against that.

14 Q. Why?

15 A. Well, when --- when you file a complaint, you
16 know, in the --- in the first --- filing a complaint with
17 certain parts --- you know, being a law enforcement
18 officer, we did tell her at the beginning, you know, he
19 could possibly, you know, with all this, you may --- if
20 it went --- you could --- he could maybe lose his job.

21 We threw that possibility out to her. But if
22 that's something, you know, and to lose his --- to lose
23 his job. But what with --- but we throw that out to ---
24 to a lot of people concerning complaints.

1 Q. So you caution complainants before they step
2 off and actually make a complaint somebody that there
3 could be consequences to all of this that, maybe, you
4 haven't thought about?

5 A. Correct.

6 Q. All right.

7 Well, when you explained this to Ellen Ballock,
8 what did she say?

9 A. I don't believe --- I don't remember what she
10 said. That was six odd years ago.

11 Q. You sure she didn't rub her hands together and
12 smile, and say ---

13 A. No.

14 Q. ---- oh, that's --- that would be fantastic.

15 A. No. She didn't do that.

16 Q. Did you read her as the sort of person who was
17 angry at her estranged husband?

18 A. No. She was scared.

19 Q. She was scared. What was it that she feared?

20 A. She was pretty much --- she didn't like being
21 bombarded every day with emails and texts.

22 Q. Yeah. A lot of those emails and texts, at
23 least in late 2012, were to the effect that he wanted to
24 reconcile with her, weren't they?

1 A. Correct.

2 Q. I mean, ---

3 A. That I remember.

4 Q. --- that was a dominant theme of his
5 communications of late 2012. Wouldn't you agree?

6 A. Yes, sir. I would agree to that.

7 Q. Sure. Come as any surprise to you that a man
8 going through a divorce, despite it all, would want to
9 reconcile with his wife? That didn't come as any
10 surprise to you, did it?

11 A. No, sir.

12 Q. And you felt that Scott's instant effort to try
13 and reconcile with Ellen constituted criminal harassment?

14 A. When she said to stop, but he wouldn't stop,
15 yes.

16 Q. Are you aware that in this litigation that
17 Scott Ballock contends that just about all this
18 communication was ongoing between the two of them? She
19 might have said in email, text, stop, but then she would
20 call him. Did you know that? She would call him on ---
21 what do you call it? Where you call, and can see each
22 other? Face --- Facetime? That kind of a thing?

23 A. During his deposition, I did hear him say that,
24 yes.

1 Q. He took some --- he hit the button and did some
2 screen captures during some of those calls. Are you
3 aware of that?

4 A. No, sir.

5 Q. If you had taken him up on the offer and
6 interviewed him during the course of your investigation
7 prior to arresting him, and he told you this, and showed
8 you evidence to the effect that she had initiated contact
9 with him, and that she had sent emails to him and texts
10 to him. Would --- would that have tempered your
11 recommendation to proceed with the arrest warrants?

12 ATTORNEY JEFFRIES: Objection,
13 mischaracterizes the evidence.

14 THE WITNESS: I don't know that, sir.

15 BY ATTORNEY CROOKS:

16 Q. You're trained in investigation, and you're a
17 supervisory member of the state police. So don't you
18 think that common sense and a sense of fair play
19 obligated you guys, even Corporal Gaskins, to try and
20 hear Scott's side of this to see if maybe --- maybe this
21 was a matter that should've simply been left in the
22 family court rather than taken to criminal court?

23 A. No, sir.

24 Q. The expungement that was rendered in regard to

1 the criminal case, what did you understand that to mean?

2 A. That's a broad question, sir. I -- expungement
3 of --- the expungement order? Is that what you're
4 talking about?

5 Q. Uh-huh (yes).

6 A. That the --- that the --- his arrest record
7 would be expunged. The report is expunged to redact his
8 name in any manner. Files removed with his name on it,
9 just like if, you know, all the proceedings were, I
10 guess, sealed. But everything --- within our office,
11 everything was redacted.

12 Q. Did you get any advice from the prosecutor's
13 office as to what expungement obligated the state police
14 to do?

15 A. No, sir.

16 Q. How did you know to go through this massive
17 file that you produced through your attorneys and --- and
18 redact out Scott's name everywhere is showed up?

19 A. All expungements go through our legal down in
20 Charleston.

21 Q. Okay.

22 So this is where the in-house attorney for the
23 state police got involved?

24 A. They --- all expungements come through --- they

1 were --- they're sent down to Charleston, and then
2 they're sent back up.

3 Q. Okay.

4 Were you personally involved in any of ht
5 redacting work that was done?

6 A. No, sir.

7 Q. That's not your ---

8 A. No, sir.

9 Q. --- job description?

10 A. No, sir.

11 Q. Okay.

12 Did the corporate attorney for the state police
13 or anybody at the prosecutor's office explain to you that
14 expungement has the legal effect of meaning that it's as
15 if it never happened?

16 A. Correct.

17 I did know that. I don't know --- corporate
18 attorney, I don't know what that means.

19 Q. When I say corporate attorney, I'm thinking of
20 the in-house counsel.

21 A. Oh, yes, sir. Yes, sir.

22 Q. That was probably just a slip of the tongue on
23 my part. I should've referred to him as the in-house
24 counsel.

1 Do you know if Trooper Christopher Berry ever
2 conducted any surveillance of Scott Ballock?

3 A. I do not know that, sir.

4 Q. Was any surveillance performed as a part of the
5 investigation into the case against my client, Scott
6 Ballock?

7 A. No, sir.

8 Q. Do you know if Trooper Chris Berry ever
9 performed any surveillance on Scott's parents?

10 A. Not that I know of, sir.

11 Q. If Trooper Berry ever performed any
12 surveillance on his own time, off the company clock,
13 would that have been appropriate according to policy and
14 procedure of the state police?

15 A. I don't know of an instance where that would be
16 proper.

17 Q. In fact, state police probably have a standing
18 policy against moonlighting, don't they?

19 A. They want to know if we have a second job. It
20 actually has to be approved.

21 Q. It has to be approved?

22 A. Yes, sir.

23 Q. So if one of the troopers wanted to do some
24 surveillance to try to help somebody out, even if off the

1 clock, they'd have to get permission?

2 A. Not if they work for a company. Of course,
3 that --- you're kind of broad on it.

4 Q. Let's --- let's leave that out.

5 A. Okay.

6 Q. Let's just focus on a situation like we have in
7 this case.

8 A. Uh-huh (yes).

9 Q. If Chris Berry took it upon himself to do any
10 surveillance work on behalf of Ballock, Ellen Costlow, if
11 he did that without telling superiors of the state
12 police, that would be wrong, wouldn't it?

13 A. There would be a problem, sir.

14 Q. There would be a problem.

15 COURT REPORTER: Seven?

16 ATTORNEY CROOKS: Uh-huh (yes).

17 ---

18 (Whereupon, Deposition Exhibit 7, FBI
19 Documents, has been marked for
20 identification.

21 ---

22 ATTORNEY CROOKS: Are you my reporter
23 tomorrow?

24 COURT REPORTER: Yeah.

1 ATTORNEY CROOKS: Okay.

2 Could you hang onto all these exhibits,
3 and bring them back?

4 COURT REPORTER: Sure.

5 ATTORNEY CROOKS: And then we'll just use?

6 COURT REPORTER: Uh-huh (yes), yep.

7 Something that I need to hold onto mine
8 too.

9 ATTORNEY CROOKS: What's that?

10 COURT REPORTER: I said I need to hold
11 onto mine too.

12 ATTORNEY CROOKS: Well, you --- you follow
13 your own --- you take your own Counsel on that, but I
14 would suggest that might be a good idea.

15 Okay.

16 BY ATTORNEY CROOKS:

17 Q. So Kief Deposition Exhibit 7 has been marked
18 and provided to you.

19 A. Yes, sir.

20 Q. It's further identified by control numbers
21 Troopers 878 through Troopers 882. That control sequence
22 indicates that this is part of the collection produced in
23 Discovery by your Counsel in response to our formal
24 requests.

1 ATTORNEY JEFFRIES: Charles, before you
2 get started on that, ---

3 ATTORNEY CROOKS: Yeah.

4 ATTORNEY JEFFRIES: --- I'm just going to
5 lodge an objection to --- a warning to take this out of
6 context because most of page 880 has been redacted by the
7 FBI so you don't know context of what's there.

8 ATTORNEY CROOKS: Well, fair enough.
9 Let's address that.

10 The record should reflect that this
11 exhibit, Kief Exhibit 7, presents itself as a document
12 produced by the civil litigation unit of the Department
13 of Justice Federal Bureau of Investigation in response to
14 a request that had been made by the law firm representing
15 the trooper Defendants in this case.

16 More specifically, I would proffer for the
17 record that pages 879 and 880 are the subject of Mark's
18 objection. Page 879 explains what are called deletion
19 codes. It appears to be from an alphabetized list of
20 deletion codes that this department routinely uses on
21 documents they produce.

22 ATTORNEY JEFFRIES: It appears they do
23 this quite often.

24 ATTORNEY CROOKS: Yes.

1 Specifically, deletion codes K, L, M and S
2 are detailed of page 879, and they did that apparently
3 because they were asserting those reasons for redacting
4 pretty much the entirety of 880.

5 At the bottom of page 880, after the
6 redaction, there appears to be some email. It appears to
7 be the beginning of an email, actually, from agent John
8 D. Large, FBI, sent April 10, 2017. Directed to Raymond
9 P. Duda, D-U-D-A, of the FBI. And the subject of the
10 email is WVSP, which I interpret as West Virginia State
11 Police, Call to Clarksburg, RA, Resident Agent.

12 Okay.

13 So Mark is protecting the record in
14 respect to the wholesale redaction that appears on page
15 880. I don't know --- I don't know quite what to say
16 about your objection, Mark. I probably would wind up
17 joining it. I wish --- you know, I wish the government
18 that serves the people of this country could be more open
19 and transparent of the people of this country. But I
20 won't elaborate any further on that.

21 ATTORNEY JEFFRIES: Well, I just wanted to
22 get on the record I object to this document, but go
23 ahead. Ask about whatever you do have.

24 ATTORNEY CROOKS: Sure.

1 BY ATTORNEY CROOKS:

2 Q. Lieutenant, you know, we're working with the
3 best production that your lawyer could manage from the
4 FBI on this. And it appears there's an email from Agent
5 Large to Agent Duda.

6 You can read it for yourself. The entirety of
7 it appears on page 881. If you haven't had the chance,
8 I'll give it to you now.

9 A. I'm familiar with it, sir.

10 Q. You're familiar with this?

11 A. Uh-huh (yes).

12 Q. You've seen this before?

13 A. Uh-huh (yes).

14 Q. Is this one of the emails you reviewed in
15 preposition for deposition today?

16 A. I don't believe so.

17 Q. No? Okay.

18 But you've seen it?

19 A. Yes, sir.

20 Q. Starts out per discussion, so apparently Agent
21 Large and Agent Duda must have had a discussion, probably
22 by telephone --- it could've been in person --- about the
23 West Virginia State Police First Sergeant Michael Kief,
24 that's you, from the Wheeling detachment, reporting to

1 the FBI about Scott Ballock coming to the Morgantown
2 barracks on April 7.

3 Scott's appearance at the barracks on that date
4 was mentioned earlier in third session today.

5 A. Correct.

6 Q. And I don't want to go back through all that.
7 But it would appear that you reported to Agent Large, the
8 resident agent in Clarksburg, about Scott's appearance at
9 the barracks?

10 A. Uh-huh (yes).

11 Q. Is that a fair capture of what --- of what
12 we're seeing reported here?

13 A. Yes, sir.

14 Q. So as part of this exhibit, Agent Large
15 reported to Agent Duda that you presumed that Scott was
16 trying to provide some information in anticipation of
17 what turned out to be this civil litigation that brings
18 us here together today?

19 A. Correct.

20 Q. So it was your understanding as of whatever
21 date you got in touch with the FBI --- and I'm going to
22 ask you that next, I mean, was it --- was it the same
23 day? Did you call the Resident Agent the same day?

24 A. I --- I don't know if I did. Or it was the

1 next morning. I don't know that.

2 Q. Okay.

3 You may not have had an opportunity to call
4 until the next day. But apparently you --- you made it a
5 priority to get in touch with the FBI to tell them that
6 Scott had stopped by the Morgantown barracks with that
7 paperwork?

8 A. Correct.

9 Q. And I guess one of my questions is, you know,
10 why did you deem it necessary to contact the FBI about
11 this?

12 A. On two previous occasions, I had seen Mr.
13 Ballock out in public. On both of those incidences, I
14 felt that he was trying to intimidate me on both
15 instances.

16 Q. Okay.

17 A. And this was another instance of trying to
18 intimidate us, or me. He was there for no apparent
19 reason. He wasn't there to serve us. He just wanted us
20 to have the information. He wasn't there in a legal ---
21 his official capacity. He was just there to --- I don't
22 want to say intimidate us.

23 Q. Well, too late. You already did. But to ---.

24 A. Right. So this was in an effort to try to ---

1 I didn't know about the fourth instance. I didn't want
2 to be around him. I didn't want to --- him to approach
3 me. I didn't want him at the office to --- for something
4 to happen. I didn't --- I didn't want another
5 confrontation with him.

6 Q. Okay.

7 Well, I don't know anything about what you just
8 referenced. These, I think, you said a couple of
9 occasions ---

10 A. Yes, sir.

11 Q. --- that you had just happened across Scott ---

12 A. Correct.

13 Q. --- out in public, I guess?

14 A. Yes, sir.

15 Q. Maybe a grocery store or something. I don't
16 know. Was that where it was?

17 A. Once a grocery store, yes.

18 Q. Grocery store. Where was the other case?

19 A. Sheetz.

20 Q. Sheetz, okay.

21 So you bumped into each other?

22 A. We didn't bump into each other. We were in the
23 same vicinity.

24 Q. Just you saw each other?

1 A. Right.

2 Q. Okay.

3 And you both knew that you saw each other?

4 A. Absolutely. Right.

5 Q. Any exchange of communication?

6 A. I don't believe so. He --- he walked towards
7 me twice, and I just got that ---.

8 Q. Walked toward you --- what do you mean, as if
9 --- as if to approach you in conversation?

10 A. I don't know if to approach me in conversation,
11 or he just wanted me to know he was there. I don't know.

12 Q. All right.

13 A. I don't know.

14 Q. Okay.

15 A. So this is in reference to him showing up at
16 the office to give us information that was going to be on
17 the news the next day.

18 Q. Okay.

19 Well, these two prior occasions, can you give
20 me any better feel for when they happened?

21 A. I can't remember, sir.

22 Q. They would've been before the criminal case
23 against him was dismissed and expunged or after?

24 A. They would --- you know, I don't know that,

1 sir. I can't remember. I don't remember that.

2 Q. Did --- we know that you and Scott did have a
3 telephone conversation at least once when he was trying
4 to get a copy of a police report, and you told him that
5 there was no police report down. By the way, I tracked
6 that date down. March the 6th, 2013 was the date that
7 the state police went to the Ballock residence in this
8 event if it helps you.

9 A. Okay.

10 Q. If it helps you or not, but ---.

11 A. Same general time.

12 Q. Well, at least it tells you that that instance,
13 presuming that I'm accurate in my interpretation. I'm
14 pretty confident that I am. It happened before the
15 instance where --- that we discussed where the county
16 sheriff deputies went to the Ballock residence August the
17 12th. Then it was about, what, September --- when was it
18 that Ellen Costlow came in and --- and gave you the
19 information necessary to get those warrants?

20 A. You mean the disc? The first ---?

21 Q. Yeah, all that stuff.

22 A. I --- I don't remember that, sir. I don't
23 remember that. I'm sure there are notes someplace.

24 Q. So your purpose then in contacting the FBI as

1 documented to the extent that it is by Kief Deposition
2 Exhibit 7 was simply to, you know, tell the FBI that,
3 hey, you know, one of your agents is --- has, you know,
4 come to the barracks. And I've looked, and apparently he
5 filed a lawsuit April the 6th, the day before he came to
6 the barracks.

7 A. I don't care if he filed a lawsuit. That's
8 not ---.

9 Q. What did you mention then? You mentioned it
10 apparently. Kief advised that he searched pending court
11 matters ---.

12 A. I didn't know what information he wanted to
13 give us. That's why I searched to see what's going on
14 here.

15 Q. Okay.

16 A. Then I found the lawsuit. And I was like,
17 okay. That makes sense.

18 Q. Okay.

19 I follow that.

20 So what could --- what did you want the FBI to
21 do?

22 A. He wasn't there for anything specific purpose
23 except to thumb his nose at us. I'm going to do this.
24 And he was arrogant enough to think it was going to be on

1 the news the next day. So after the websites, after his
2 general displeasure with --- with me, and what's
3 discussed about me on the websites, we probably don't
4 need to be in the same general vicinity of each other. I
5 didn't want Corporal Gaskins or Trooper Berry to, you
6 know, say anything or do anything.

7 Q. You're a well-spoken, polite person that --- I
8 think you're meaning that you're saying after readings
9 what's been said about you on Tom Ballock's website, you
10 don't know if you can keep your temper intact if --- if
11 you're around Scott or his father. Is that what you're
12 telling me?

13 A. We didn't need to be in the general vicinity of
14 each other. I don't know his purpose of going there to
15 give us that information. I --- I don't know that.

16 Q. Fair to say, you're not afraid of Scott, are
17 you?

18 A. I can take care of any situation that's
19 presented in front of me.

20 Q. I'll bet you can. You're an impressive
21 physical specimen.

22 But it almost sounds to me like your concerned
23 that if Scott's spoiling for a fight, you're going to
24 find it difficult to deny it to him if the opportunity

1 comes around?

2 A. I would never get into a physical confrontation
3 unless provoked.

4 Q. Okay.

5 A. Now, with that said ---.

6 Q. It wouldn't take much to provoke you?

7 A. I didn't say that either.

8 Q. Okay.

9 What are you --- well, I'll let you say it. Go
10 ahead.

11 A. We just didn't need to be in the general
12 vicinity of each other with his attitude towards me
13 that's on the Internet for everybody to see, and my
14 displeasure for him. We just --- it's just not a good
15 combination to have two people that don't like each other
16 in the same vicinity.

17 Q. All right. All right.

18 I think I understand.

19 Have you read the complaint that Scott filed in
20 this case? Actually, there've been three amendments to
21 it.

22 A. I probably haven't read the whole thing, sir.
23 I'm sure I reviewed it, but I never --- I haven't read
24 the whole thing, no, sir.

1 Q. So when you arrested Scott, you didn't handcuff
2 him?

3 A. No, sir. I didn't --- no. I didn't --- no.
4 No. We did not handcuff him.

5 Q. I guess I just --- all this time, I presumed
6 that you did. I thought you guys always did that.

7 A. No. No, sir. We were in the same building as
8 the magistrate court. We just took him upstairs and got
9 him arraigned.

10 Q. Okay.

11 Did you relieve him of his weapon?

12 A. No, sir. That was one of the reasons why we
13 did it at the magistrate's office or at --- in that
14 building. We knew he would not have his weapon on him.

15 Q. He didn't have his weapon on him in family
16 court?

17 A. You can't have your weapon on you in the family
18 courts. They don't care who they are. They disarm you.
19 They would disarm anybody.

20 Q. Okay.

21 Well, you're helping me because, my
22 understanding, this is kind of, I'll admit this and be
23 naïve on this point. I see a little bit of a conflict
24 between his obligation as a federal agent to always have

1 his weapon on him and security expectations of the --- of
2 the county court system which says you're not bringing
3 any weapons in here.

4 A. True.

5 Q. So I didn't quite know what the --- who, you
6 know, who had the upper hand in that conflict of law.

7 A. There are certain courts in this state that
8 would disarm us when going into.

9 Q. Is that right? So if you --- if you go to, I
10 mean, our case is in federal district court. You go to
11 federal district court for a hearing, you know, the
12 marshals are going to have you leave your weapon.

13 A. I wouldn't take my weapon in, though.

14 Q. You wouldn't take it in?

15 A. Correct.

16 I wouldn't want them to handle my weapon,
17 actually.

18 Q. I think I follow you there.

19 ATTORNEY CROOKS: Let's go ahead and mark
20 that. Just go ahead and hand it --- put it, yeah.
21 There. Let your lawyer see it, and let's give Todd a
22 moment to look at it. It's just a copy of one of the
23 warrants for arrest.

24 ---

1 (Whereupon, Deposition Exhibit 8, Warrant
2 for Arrest - Harassment, was marked for
3 identification.)

4 (Whereupon, Deposition Exhibit 9, Warrant
5 for Arrest - Unwanted Communications, was
6 marked for identification.)

7 ---

8 ATTORNEY CROOKS: Identify your signature
9 there as having been the officer who executed these
10 warrants.

11 What are we up to now?

12 COURT REPORTER: That was 8 and 9.

13 ATTORNEY CROOKS: 8 and 9.

14 BY ATTORNEY CROOKS:

15 Q. Lieutenant, have you looked at Exhibits 8 and 9
16 enough to tell me if those are ---

17 A. There's two separate --- okay. I got you.

18 Q. --- accurate copies of the warrants that were
19 issued for Scott Ballock's arrest?

20 A. Yes, sir.

21 Q. And are they two separate warrants?

22 A. I believe so, sir. Yes, sir.

23 Q. One's for harassment?

24 A. Yes, sir.

1 Q. The other is for stalking?

2 A. One is for stalking harassment, and then one is
3 for unwanted communications via computer.

4 Q. Okay.

5 So stalking harassment --- actually, this is
6 more a harassment than stalking.

7 Right?

8 A. Correct.

9 Q. Yeah. I mean, you guys --- you guys weren't
10 contending that Scott was actually stalking her?

11 A. Not that I believed, sir. No.

12 Q. Following her, walking around in the grocery
13 store behind her ---

14 A. No, sir. No, sir.

15 Q. --- or anything like that?

16 And do you recognize your signature on Exhibits
17 8 and 9?

18 A. Yes, sir.

19 Q. Does that indicate that you, in fact, signed
20 off as having executed those warrants?

21 A. Correct.

22 Q. And I do think we covered this, but just to be
23 sure. This process of harassment, to your knowledge,
24 Scott didn't know it was going to happen, did he?

1 A. No, he did not.

2 Q. All right.

3 And his reaction to it was calm and civil?

4 A. I --- yeah. I don't remember anything out of
5 the ordinary. Yes, sir.

6 Q. Did he say anything rude to you?

7 A. I don't believe so.

8 Q. Did he ever once raise his voice?

9 A. Don't believe so.

10 Q. You didn't handcuff him. Did you --- did you
11 talk with him about that? You know, I'm not going to put
12 handcuffs on you?

13 A. I don't think we talked about it. I explained
14 the warrants to him, and that we would be going upstairs
15 to see to the magistrate, which knew we were coming.

16 Q. Okay.

17 So you were instructing him more than inviting
18 him to go with you upstairs to see the magistrate?

19 A. Yes, sir. He was under arrest at that point.

20 Q. He was under arrest. So you --- you did read
21 him his rights?

22 A. No, sir.

23 Q. No? You did take him upstairs to the
24 magistrate?

1 A. Yes, sir.

2 Q. I trust somebody read him his rights up there.

3 A. I'm sure the magistrate advised him of his
4 rights.

5 Q. So that whole process of due process went
6 without a hitch?

7 A. At the magistrate's office, sir? Is that what
8 --- Yes, sir. I don't remember anything out of the
9 ordinary.

10 Q. Could --- could all this have been accomplished
11 by the issuance of a summons?

12 A. It --- I guess it could have. The summons is
13 --- is a way of doing it, but that's not our --- I don't
14 think in 25 years I've ever gotten a summons.

15 Q. Well, this was something of a special case in
16 that the West Virginia State Police has a specific policy
17 where public figures and other members of law enforcement
18 community are the subject of investigation or arrest, at
19 least one of the objects of that special policy is to try
20 and deescalate and --- and minimize the amount of
21 spectacle around the investigation and arrest, if it
22 should happen.

23 Right?

24 ATTORNEY JEFFRIES: Objection,

1 mischaracterizes the evidence.

2 BY ATTORNEY CROOKS:

3 Q. Am I misstating any of that?

4 A. A spectacle, I don't believe we ---.

5 Q. Well, spectacle. I mean, like, why the hell
6 would this --- wasn't there a little element of spectacle
7 about this? I mean, they just finished a hearing in
8 front of the family court, and there you are to arrest
9 Scott in front of the court.

10 A. I don't believe this was a spectacle. If we
11 wanted to make a spectacle out of it, we could've done it
12 a couple different ways.

13 Q. I'll grant you that. It could've been made
14 worse.

15 A. Absolutely. Yes, sir.

16 Q. Yeah. It could've been more aggravating.

17 Were you present when the hearing was held on
18 April 7, 2016 when Marcia Ashdown submitted her motion to
19 dismiss both of the charges against Scott?

20 A. I was at the hearing, yes, sir.

21 Q. Okay.

22 Was there a particular reason that you were at
23 the hearing?

24 A. We had showed up at the --- we thought we were

1 going in for a trial. We just stayed for the hearing. I
2 don't remember if Marcia asked us to stay. I don't
3 remember that.

4 Q. Was Scott there?

5 A. Of course he was.

6 Q. And Mike Benninger?

7 A. Yes, sir.

8 Q. Marcia Ashdown was there?

9 A. Yes. Yes, sir.

10 Q. A little unusual for the --- they elected the
11 head prosecutor to come to the magistrate's court, isn't
12 it?

13 A. I've had the main prosecutor in magistrate
14 court before.

15 Q. Not unheard of, but it's unusual, isn't it?

16 A. Yes. It is unusual, yes.

17 Q. And it's --- it's kind of an indicator that
18 something significant is --- is going on. Don't you
19 agree? You took it that way?

20 A. No, she wanted to handle it.

21 Q. Right. She wanted to personally see to it that
22 things got handled the way she thought they should.

23 Did Marcia Ashdown ever tell you before she
24 submitted this motion to dismiss the charges that ---

1 that she was going to do it?

2 A. We found out that morning, sir.

3 Q. That morning? Who told you?

4 A. Marcia Ashdown.

5 Q. She did. So she told you. She didn't really
6 solicit your input on it?

7 A. No, sir, not at all.

8 Q. Did you know that she had been talking with
9 Mike Benninger about terms and conditions for dropping
10 the charges against Scott Ballock?

11 A. No, sir.

12 Q. Were you kind of thunderstruck by all this?
13 Did it surprise you?

14 A. It surprised us, yes.

15 Q. Surprised us. You're speaking in the plural.
16 Were --- was Gaskins with you?

17 A. Correct.

18 Q. Anybody else?

19 A. Not that I know of, sir.

20 Q. Ellen Costlow was present?

21 A. Later.

22 Q. Later? She wasn't at the --- the hearing ---?

23 A. She wasn't at mine and Corporal Gaskins and
24 Marcia Ashdown's meeting before the hearing. Well, at

1 that time. She did come in the meeting.

2 Q. She did come in. Because she had to sign off,
3 didn't she?

4 A. I don't know if she signed off in court or
5 signed off in --- at --- I don't --- I don't recall that.

6 Q. Okay.

7 Well, tell me what --- tell me the conversation
8 that you had with Marcia Ashdown.

9 A. She brought us in, and she ---.

10 ATTORNEY JEFFRIES: I'm going to object on
11 attorney-client privilege. I'm going to instruct the
12 witness not to answer.

13 ATTORNEY CROOKS: Okay.

14 I --- I don't see how there'd be an
15 attorney-client privilege between the prosecutor and the
16 state police. She doesn't represent them.

17 ATTORNEY JEFFRIES: No, but she represents
18 the government. Either attorney-client privilege or work
19 product doctrine. I can't swear to it, Charles, but I'm
20 thinking that I've researched it, and there's a --- a
21 recognized attorney-client privilege or work product
22 doctrine for discussions between a prosecuting attorney
23 and law enforcement.

24 BY ATTORNEY CROOKS:

1 Q. Ellen Costlow was present for at least part of
2 the meeting.

3 Right?

4 A. Correct.

5 Q. What was discussed while Ellen Costlow was
6 present?

7 A. The --- what do I want to call it, the court
8 document that Marcia Ashdown drew up.

9 Q. Let's go ahead and address that. We got a
10 document marked --- what is this now? Ten?

11 A. Yes, sir.

12 Q. That should be a copy of the motion that Marcia
13 Ashdown filed as well as the attachment to it that bears
14 some signatures and states some terms.

15 ---

16 (Whereupon, Deposition Exhibit 10, Motion
17 to Dismiss Charges, was marked for
18 identification.)

19 ---

20 THE WITNESS: Yes, sir.

21 BY ATTORNEY CROOKS:

22 Q. Is that the same document that Marcia Ashdown,
23 Corporal Gaskins, you and Ellen Costlow discussed before
24 going into the courtroom with Magistrate Mullins?

1 A. Correct.

2 Q. Did --- did Marcia have a copy for you?

3 A. I don't believe she did.

4 Q. So did --- with Ellen Costlow present, there
5 certainly was no privilege attaching. What did she
6 explain when Ellen was sitting there?

7 A. She explained the --- the motion to dismiss to
8 Ms. Costlow.

9 Q. What did Ellen Costlow have to say?

10 A. She didn't like it.

11 Q. She did not like it. What'd she say to
12 indicate ---?

13 A. I can't remember her specific words, but she
14 was --- she was not --- she was not happy with --- she
15 didn't agree with the dismissal.

16 Q. Okay.

17 So she signed it under protest.

18 A. No, sir. I did not say that.

19 Q. Okay.

20 Well, I'm --- I'm asking.

21 A. After it was discussed with Ms. Costlow and the
22 prosecutor, she seemed fine with it. She came to terms
23 with it after Ms. Ashdown explained ---

24 Q. What --- I'm sorry. I didn't mean to cut you

1 off now. You go ahead.

2 A. --- what it entailed, what it meant.

3 Q. All right.

4 Well, what do you remember Marcia Ashdown
5 explain to Ellen Costlow that resolved --- appeared to
6 resolve Ellen Costlow's objection to what was about to
7 happen?

8 A. That it would put an end to the criminal
9 proceedings, and this had an element of --- it would
10 benefit everybody involved.

11 Q. How is it going to benefit Ellen Costlow?

12 A. That she would --- I believe in here it says
13 --- hold on just one second. Number six. Scott Ballock
14 agrees not to contact Ellen Costlow by any means for any
15 reason other than for her --- either child or the
16 children.

17 Q. During the course of the investigation of the
18 case against Scott Ballock, one that ultimately got
19 dismissed there in April 2017, from the time he was
20 arrested on September 13, 2013, until the day that motion
21 right there was tendered and accepted by Magistrate
22 Mullins, there were no further complaints from Ellen
23 Costlow that Scott Ballock was still contacting here and
24 harassing her, were there?

1 A. There was a condition of his bond not to
2 contact her.

3 Q. Okay.

4 That's somewhat responsive, but I'm going to
5 stand by my question.

6 A. Yes, sir. No, I'm sorry. Yes. I'm sorry.
7 Yeah, no. She did not have another complaint.

8 Q. Okay.

9 Yeah, I mean that --- I'll take your point. I
10 mean, Scott could've been hailed before the court and
11 threatened with confinement if ---

12 A. Correct.

13 Q. --- he defied the court. But fact is, he
14 didn't defy the court?

15 A. Correct.

16 Q. Okay.

17 So Marcia explained that the threat of jail
18 didn't hang over Scott anymore, but he did agree that he
19 wouldn't contact her?

20 A. Correct.

21 Q. As far as you know, he's honored that, hasn't
22 he?

23 A. As far as I know, yes, sir.

24 Q. Yeah. So what else, if anything, did Ellen

1 Costlow get out of this?

2 A. I --- I don't know that, sir.

3 Q. Okay.

4 So if --- if, really, the relief that Ellen
5 Costlow was after back in September of 2013 was to just
6 have Scott, once and for all, without any exceptions,
7 stop contacting her, whether it was to try and reconcile,
8 or whether it was to try to shame her, or whatever it is.

9 If what --- that's what she was really wanting,
10 don't you think that due process and a sense of fairness
11 argue for the state police contacting Scott and saying,
12 look, we're ready to execute on a warrant for your arrest
13 if you contact her any further? Rather than moving ahead
14 with a three-year prosecution that ended in a withdrawal
15 of the charges?

16 A. No, sir. No, sir. There was a document in
17 those emails, text messages that he said he didn't care
18 who contacted him about not contacting her, that he would
19 do it anyway.

20 Q. Okay.

21 Well, that was between him and her, but ---

22 A. Correct.

23 Q. --- once --- once the long arm of law got in
24 touch with him and said, look here. This --- this could

1 get --- this could have some negative consequences for
2 you, and you should stop and consider that. And don't
3 you think that would've been a measure that should have
4 been attempted prior to launching into this criminal case
5 that ultimately ended with a whimper rather than a bang?

6 A. No, sir. I do not.

7 Q. No?

8 A. No.

9 Q. Why?

10 A. Because of the tone of --- some of the tones of
11 the emails and texts, the length of the websites.

12 Q. Say again.

13 A. Websites.

14 Q. I didn't catch what you said just before that.

15 A. The length of websites to --- to --- against us
16 and against Ms. Costlow.

17 Q. Okay.

18 So what I hear you saying is that prior to the
19 time you arrested Scott, there was already stuff being
20 posted on the Internet that told you that Scott needed to
21 be prosecuted?

22 A. No, sir. No, I did not say that. I did not
23 say that.

24 Q. Then I misunderstood your answer.

1 A. No. It was just, of course, Mr. Ballock,
2 Senior had the websites.

3 Q. When did you first learn of those websites?

4 A. I don't know, sir. I don't know that. I don't
5 know that.

6 Q. Okay.

7 So the websites really didn't have anything to
8 do with your discretionary judgment as to whether
9 something short of arrest and criminal prosecution was
10 necessary to get Scott Ballock to cease and desist any
11 further communication with Ellen?

12 A. No, sir.

13 Q. Did you answer? I'm sorry.

14 A. I said no, sir. If I --- yeah.

15 Q. Gabriella Mucciola, M-U-C-C-I-O-L-A. Did I
16 pronounce that accurately?

17 A. Mucciola (corrects pronunciation).

18 Q. Mucciola, sorry. My Italian is not what it
19 should be.

20 She's an assistant prosecutor at the Monongalia
21 County prosecutor's office?

22 A. Correct.

23 Q. Are you aware that she came to family court and
24 sat with Ellen Costlow and argued on Ms. Costlow's behalf

1 that Scott should not be permitted to use the custody
2 evaluation and psychiatric report prepared by Dr. Christi
3 Cooper-Lehki in the course of his criminal defense?

4 ATTORNEY PHILLIPS: And I'll object to it.
5 I think that's a mischaracterization. She couldn't argue
6 on behalf of Ms. Costlow. It may ---.

7 ATTORNEY CROOKS: She --- she already knew
8 her position. Whether it was requested or not, she
9 argued against the release of the report.

10 THE WITNESS: I know she went to family
11 court, but I don't why she was in family court. I don't
12 --- I do not know that.

13 BY ATTORNEY CROOKS:

14 Q. Did you ever work with Gabriella Mucciola in
15 connection with this case against Scott Ballock?

16 A. She was assigned the case after Ms. Scott had
17 left. No. I do not remember working with her --- with
18 her on this case.

19 Q. Okay.

20 So it was your understanding that they took
21 over from Cindy Scott after she left?

22 A. Correct.

23 Q. You're friends with Gabriella Mucciola, am I
24 right?

1 A. No, sir.

2 Q. No?

3 A. No, sir. I don't --- I mean, I don't ---.

4 Q. You're not?

5 A. Ms. Mucciola?

6 Q. Uh-huh (yes).

7 A. No, sir. I know of her. She's in the
8 prosecuting office, but I'm not friends with her. I
9 mean, ---.

10 Q. She's married with a state trooper, isn't she?

11 A. Ex-state trooper.

12 Q. Ex-state trooper?

13 A. Yes, sir.

14 Q. I'm sorry.

15 What --- what's his name?

16 A. Mike Mucciola.

17 Q. Mike. So what did he do? Did he quit?

18 A. Went to work for WVU, I believe.

19 Q. Were you friends with him?

20 A. He was one of my troopers on Detachemnt.

21 Q. Okay.

22 Well, all right. I --- I take it you're a
23 professional person so you're not necessarily friends
24 with everybody you work with.

1 Right?

2 A. Correct. Yes, sir.

3 Q. Particularly if you have to supervise them. I
4 got you. I guess that's why I presumed that you were
5 friends with --- with Gabe because she's married to
6 somebody that you work with, and ---.

7 A. I --- I don't know when that wedding came
8 about. It might've been after he left. I didn't attend
9 the wedding if that's it.

10 Q. You weren't invited?

11 A. I was not invited.

12 Q. You're good. You're good.

13 One second. I think I'm getting very close
14 here to the end of the deposition. I just want to make
15 sure I got --- one of the hardest things lawyers ever
16 have to do is say no further questions.

17 Do you think Scott Ballock deserves to lose his
18 job as an FBI agent?

19 A. I did not have any --- that doesn't matter to
20 me whatsoever, sir.

21 Q. You don't trust yourself to be in his presence
22 for fear that you might put him in a headlock or
23 something?

24 A. I never said that, sir.

1 Q. Right?

2 A. Never said that.

3 Q. You just said --- well, you were very polite
4 about how you said it.

5 A. I just don't think it's very good idea for us
6 to be in the same vicinity.

7 Q. All right.

8 Let --- let me boil you down on that a little
9 bit if you don't mind me ---

10 A. Sure.

11 Q. --- doing that. What do you mean by that?
12 What --- what are you afraid is going to happen?

13 A. I'm not afraid of anything that's going to
14 happen. You put two people who don't like each other in
15 a close vicinity of somebody, you know, says something or
16 you know, if they're being misconstrued in the wrong way.
17 And --- and we don't want any misconceptions or --- or
18 misunderstandings.

19 Q. So the two of you being in the same place at
20 the same time has the potential to be a volatile
21 situation? Could --- unintended provocation could easily
22 happen is what ---.

23 A. Unintentional misunderstandings.

24 Q. Yeah.

1 A. Yes, sir.

2 Q. You're saying a lot with your nonverbal
3 language that I'm just trying to get into the record.
4 That's just ---.

5 A. No, sir. It's --- it's --- it is what it is.
6 You know.

7 Q. You're very effective in your nonverbal
8 language, but I just --- I need to get it into the
9 record. That's all. I understand you.

10 Are you aware that Tom Ballock took those
11 websites down?

12 A. I believe I am. Yes. Either --- yes. I am
13 aware that he took those websites down. For now.

14 Q. Did the --- the state police, the internal
15 affairs --- and I know I'm forgetting the proper name, so
16 help me.

17 A. Professional Standards Unit.

18 Q. Professional Standards Unit. Did they ever
19 have any communication with you about things that Tom
20 Ballock was saying on his website? Did it ever cause you
21 to be interviewed, or were you suffering embarrassment at
22 work?

23 A. No, sir. No --- embarrassment at work? There
24 were certain nicknames I got.

1 Q. What for?

2 A. From the websites. I don't know if it was
3 embarrassment or not. I didn't like them.

4 Q. I understand you.

5 A. But yeah.

6 Q. There was something else I --- I wanted to ask
7 you about. Ellen Costlow works as a schoolteacher?

8 A. Yes, sir.

9 Q. Marion County?

10 A. Uh-huh (yes).

11 Q. Did you serve as a character reference on her
12 behalf to the school?

13 A. Not a character --- I don't know what she would
14 --- you can take it for what you characterize it as. I
15 was contacted by the school board.

16 Q. School board contacted you?

17 A. I --- I can't remember if they contacted me or
18 I called them back. I can't remember how that --- that
19 went. I don't know how that went, sir.

20 Q. Okay.

21 A. They wanted to speak to me.

22 Q. They wanted to talk to you?

23 A. Correct.

24 They wanted --- yes, yes.

1 Q. You didn't --- you didn't initiate
2 communications with the board?

3 A. No, sir, I did not.

4 Q. Fair. Okay.

5 What were the circumstances? Help me. When
6 was it, and what was it about?

7 A. I don't remember when it was. They ---.

8 Q. Well, let me see if I can help you remember.
9 Would it have been during pendency of the criminal
10 charges against Scott Ballock?

11 A. I don't know. I can't ---.

12 Q. That doesn't help you?

13 A. Yeah. Does not help me at all, sir.

14 Q. Okay.

15 A. It does not.

16 Q. Well, I'm sorry. You go ahead. Tell me what
17 you can remember.

18 A. They had some questions about, I believe, some
19 letters they were receiving.

20 Q. From who?

21 A. I --- I believe they were from Tom Ballock.

22 Q. Okay.

23 A. In regard to Ms. Costlow.

24 Q. Okay.

1 A. And they had --- they had referenced websites,
2 what was on the computer about Ms. Costlow. And wanted
3 to know, basically, what is this? This is not normal.
4 This is not something we encounter every day. And they
5 wanted to --- they wanted me to verify that --- that
6 there was a criminal investigation about harassment, and
7 which I'm sure Ms. Costlow told them. And that she was
8 being harassed, and --- and that her ex-husband had been
9 charged in that.

10 Q. Would this recollection that you just shared
11 cause you to think that the school board reached out to
12 you during the pendency of those criminal charges before
13 they were dismissed and expunged?

14 A. I don't remember that, sir. I don't remember
15 what timeline that was.

16 Q. If they had gotten in touch with you after the
17 charges had been dismissed and expunged, you would not
18 have been at liberty to --- to talk about any charges
19 against Scott because of the expungement.

20 True?

21 A. True. I, again, I don't remember when that
22 was, sir.

23 Q. I'm just --- I'm trying to help narrow it down.

24 A. I understand.

1 Q. Yeah. I mean, you obviously were at liberty to
2 tell them things about this. So I'm presuming,
3 surmising, that it was, therefore, prior to the
4 expungement order.

5 A. I don't know that. I can't remember that, sir.

6 Q. Okay.

7 A. I don't know.

8 Q. All right.

9 I've tested you enough along that line, I
10 guess. But you told them that, yes, there were two
11 charges pending, and that you were aware of it. And
12 that, what, that they shouldn't believe what they read on
13 the Internet ---?

14 A. I never said that.

15 Q. Okay.

16 Well, then, tell me what you said.

17 A. They thought it was abnormal what --- what
18 they'd seen on the websites, and what they'd seen on the
19 computer about Ms. Costlow. And ---.

20 Q. There are some pretty unflattering things on
21 that website.

22 A. True, yes. And they received information,
23 letters about Ms. Costlow, which, of course, they never
24 have seen anything like this before. So they were kind

1 of, like ---.

2 Q. You mean, like, parents were writing in
3 saying ---?

4 A. I don't --- no. I don't believe parents were
5 writing in. I did not say that.

6 Q. All right.

7 I thought maybe a parent had ---

8 A. No. I believe it was --- I believe it was ---.

9 Q. --- seen Tom Ballock's website.

10 A. I don't know that. I don't know that. I think
11 this was specifically about Tom writing letters.

12 Q. So did you tell the school board that Tom
13 Ballock was a mentally ill person?

14 A. I don't believe I said that, no, sir.

15 Q. All right.

16 Well, I know that we --- earlier in the
17 session, you put in writing you didn't think the
18 assistant prosecuting attorney, Cindy Scott, appreciated
19 Tom Ballock's mental illness.

20 A. Correct.

21 Q. Okay.

22 Ergo, you know, you had an opinion on that, and
23 I'm wondering if you shared it with the school board.

24 A. I don't remember the specific conversation. If

1 I --- I'm sure I didn't unflatterly say anything about
2 Mr. Ballock. They wanted to know facts and circumstances
3 of --- of a criminal charge because they had never seen
4 anything like this before.

5 Q. They were confused.

6 ATTORNEY JEFFRIES: I want to place an
7 objection to this continuing line of questions. Mr. Tom
8 Ballock isn't a party to this case. There's no
9 allegations concerning ---.

10 BY ATTORNEY CROOKS:

11 Q. Well that website also makes reference to what
12 Tom Ballock characterize, shall we say, as a scandalous
13 and unfounded criminal case against his son, right? And
14 this is Ellen's ex-husband or estranged husband depending
15 on when --- when this inquiry was made, right?

16 A. From what I gathered from the --- the Board of
17 Education, it had nothing to do with what --- it was ---
18 they didn't tell me what was in the letters. They made
19 reference to unflattering remarks about Ms. Costlow. And
20 the whole thing, again, was very abnormal to them. And
21 they wanted a clarification on the whole subject.

22 Q. Okay.

23 And imagine, I'm trying to understand what
24 you're sharing here.

1 A. Uh-huh (yes).

2 Q. Was this the school principal or the school
3 board chairman? Or who was it that called you?

4 A. I --- I'll believe it was the vice-principal or
5 the principal. I can't remember which one.

6 Q. Okay.

7 Somebody on the school board?

8 A. I believe so. No, no, no. I take that back.
9 No, it was not. It was not. It was either the assistant
10 superintendent or the superintendent.

11 Q. Okay.

12 A. Of Marion County.

13 Q. That helps me.

14 A. Yes, sir.

15 Q. And so did you tell them that, look, you know,
16 I'm investigating Ellen Costlow's estranged husband?

17 A. No, sir. I --- I told them that he had been
18 charged.

19 Q. He had been charged?

20 A. Yes, sir.

21 Q. Okay.

22 A. They had ---.

23 Q. So they're probably saying who is this guy, Tom
24 Ballock, and why does he say all these things about her,

1 and are they true?

2 A. They knew who he was.

3 Q. So they knew who he was. So what was their
4 confusion? What did they --- what were they confused
5 about?

6 A. They --- they had just never seen anything like
7 this to the --- to the point of trying to get somebody
8 --- to try to harm somebody or harass somebody or try to
9 get them to lose their job or --- or whatever. They've
10 never seen anything of this degree before. It was very
11 unusual, and of course, they saw the websites and
12 everything.

13 Q. Sure. How'd you leave it with this assistant
14 superintendent?

15 A. Sir?

16 Q. Did you say assistant superintendent, or ---?

17 A. I can't remember which one it was. I don't
18 understand how ---.

19 Q. I mean, was it just the one call, and that was
20 it or ---?

21 A. I believe it was just one call, sir. I don't
22 remember having another phone call with them. There was
23 another phone call made, but not by that --- not by
24 Marion County.

1 Q. Who was it?

2 A. The state superintendent --- the State Board of
3 Education.

4 Q. State Board of Education?

5 A. Yes, sir.

6 Q. Okay.

7 They were subsequent to the county board?

8 A. No, sir. There was --- they received letters
9 also, and called and wanted to know what was going on.
10 Again, they --- they'd never seen anything like this
11 before. I guess they were receiving letters also.

12 Q. Okay.

13 Well, what did you tell the State Board of
14 Education?

15 A. That --- that her soon to be ex-husband or
16 ex-husband had been charged with --- with criminal
17 offense.

18 Q. Okay.

19 So that these charges were pending, and that
20 was basically all you could tell them?

21 A. Pretty much, sir. Yes.

22 Q. I mean, you could kind of suss that out from
23 the website, that there were charges pending. But I
24 mean, you couldn't --- you didn't add anything beyond

1 that?

2 A. Not that I can remember, sir.

3 Q. Did they seem satisfy that you gave them all
4 the information you could?

5 A. I can't remember if they seemed satisfied or
6 dissatisfied, sir. I don't --- I don't remember that.

7 Q. I'm just trying to get a feel for --- you know,
8 are these people saying what --- you know, you got to
9 know more than that. And you're saying, well, that's all
10 I can tell you?

11 A. Well ---.

12 Q. Is that the flow of the conversation? I'm
13 telling you what I can tell you.

14 A. I don't remember the substance of the
15 conversation, sir. I know, you know, I told there was a
16 criminal charge. And, again, the whole thing was
17 abnormal to them. Not normal.

18 Q. Okay.

19 ATTORNEY JEFFRIES: You have much more,
20 Charles?

21 ATTORNEY CROOKS: That's exactly what I'm
22 asking myself. I'll tell you what. I'll be satisfied to
23 pass the witness, and listen, and --- and finish looking
24 at my document here. As long as we don't come back

1 around, and meet the argument that, you know, I already
2 passed the witness and I can't ask, you know.

3 ATTORNEY PHILLIPS: No. But I'd like to
4 take a break, please.

5 ATTORNEY CROOKS: Okay.

6 ---

7 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

8 ---

9 ATTORNEY CROOKS: Kief Deposition Exhibit
10 11 has been marked.

11 ---

12 (Whereupon Deposition Exhibit 11,
13 Investigation Report, was marked for
14 identification.)

15 ---

16 BY ATTORNEY CROOKS:

17 Q. You've got a copy.

18 This looks like Corporal Gaskins' investigation
19 report. Is that what it is, signed by Corporal R.M.
20 Gaskins?

21 A. Yes, sir.

22 Q. Okay.

23 I couldn't find a date on this anywhere.

24 A. It was probably attached to the one named ---.

1 That's why. It was probably attached to that.

2 Q. Okay.

3 Is that routine?

4 A. Yes, sir.

5 Q. Okay.

6 That would explain --- I just thought ---
7 although there wouldn't be any reason why this couldn't
8 be dated.

9 Right?

10 A. No, sir.

11 Q. Take a look at the last page. Page eight. It
12 says this investigation is an initial and complete,
13 cleared by arrest?

14 A. Yes, sir.

15 Q. What does that mean?

16 A. Initial is --- we have two types of
17 investigations, initial investigations and supplemental
18 investigations. A supplemental investigation would be
19 something that's been completed after the initial
20 investigation is over with, something else to add to the
21 --- to the report.

22 Q. Okay.

23 A. Initial is --- this was taken initially
24 and ---.

1 Q. First report?

2 A. First report. Yes, sir.

3 Q. Okay.

4 A. And the investigation is complete, and it was
5 cleared by the arresting of the ---.

6 Q. And it's initial and complete, meaning the
7 investigation is done?

8 A. Until other circumstances might open themselves
9 up ---

10 Q. Okay.

11 A. --- to further investigation.

12 Q. And you're saying that this would've been
13 attached to one of the other exhibits?

14 A. I believe. It'd be --- Yes, sir.

15 Q. Exhibit Number ---?

16 A. Exhibit Number 5.

17 Q. And the title of five is?

18 A. West Virginia State Police Complaint Report.

19 Q. Date of that?

20 A. Yes, sir.

21 Q. What is the date of Exhibit 5?

22 A. I'm sorry?

23 Q. You're saying that Exhibit 11 ---

24 A. Right.

1 Q. --- it had been an attachment to Exhibit 5.

2 A. If I'm reading it correctly. Yes, sir.

3 Q. Okay.

4 Well I'm moving right along with you on this,
5 but my question now is what's the date on Exhibit 5?

6 A. The --- the turned-in date?

7 Q. I guess.

8 A. It would be September the 18th, 2013.

9 Q. Okay. Okay.

10 Cleared by arrest. Cleared by arrest. What's
11 that mean?

12 A. We have different ways of classifying reports.
13 One would be the investigation's pending. Two would be
14 cleared, or cleared by arrest, or prosecution denied,
15 something to that effect. Juvenile, no custody. Turned
16 over to another agency, or something like that. Just the
17 way they classify the report. Or the investigation, I'm
18 sorry.

19 Q. Going from this report, it looks like --- it
20 looks like you participated in several aspects of, shall
21 we say, the investigation. There's a reference I want to
22 find. I guess I'm over on page five.

23 It looks like Corporal Gaskins went to
24 Magistrate Holepit on Thursday, September 12, at 11:30

1 hours and obtained two arrest warrants, which we've
2 already discussed in the session today.

3 Next paragraph says at approximately 18:15
4 hours, presumably the same day.

5 Right?

6 A. All right.

7 Q. You read it that way?

8 A. Sure.

9 Q. Okay.

10 So we're talking Thursday, September 12th, 2013
11 at approximately 18:15 hours, military. That would be
12 6:15 p.m. civilian time. Sergeant M.A. Kief, that's you,
13 scheduled an interview with the victim at the Morgantown
14 detachment.

15 A. That's incorrect, sir.

16 Q. Didn't happen?

17 A. Well, that should've been the beginning --- in
18 the beginning of the report. I think he's got --- I
19 don't know. I don't --- I don't know what that is.

20 Q. He appears to be rather deliberate about how
21 he's doing this. Could it be that your recollection ---

22 A. No, sir. I wouldn't have got ---.

23 Q. --- failed you?

24 A. No, sir, not at all. I would not --- got the

1 disk containing the emails and text messages and
2 photographs after the criminal complaint had been filed.
3 That would have been done at the beginning of the
4 investigation. I believe there's --- I can't say
5 for ---.

6 Q. Okay.

7 A. I think that paragraph was --- was ---

8 Q. Well, that ---.

9 A. --- inserted someplace it's not supposed to.

10 Q. There's reference to this paragraph to Sergeant
11 M.A. Kief recorded the interview, but due to technical
12 difficulties, did not record.

13 A. I don't know what that is about, sir. I don't
14 remember that at all. But I believe that --- that
15 paragraph was put in where it's not supposed to be. Or
16 it's a duplicate paragraph. I don't know.

17 Q. Well, take a look at the first page, second
18 paragraph.

19 A. Uh-huh (yes).

20 Q. Sergeant M.A. Kief provided the undersigned
21 officer--- that would be Corporal Gaskins --- with the
22 Magnavox DVD-R on Wednesday, August 28th, 2013 at
23 approximately 2:30 in the afternoon.

24 A. Again, sir, I --- I don't --- I do not know

1 what that paragraph is in there. I don't know. I would
2 think that getting permission from the attorney --- at
3 that point, we had all that stuff.

4 Q. Okay.

5 It says at the bottom of the second paragraph
6 that there's a letter attached, but there were not
7 attachments to this document when I got it. Could this
8 Exhibit 11 have just been part of kind of a package of
9 documents?

10 A. I don't --- I don't know that, sir. I don't
11 --- I don't know that. I didn't create ---.

12 Q. All right.

13 Maybe I'll just sort that out with Corporal
14 Gaskins.

15 ATTORNEY JEFFRIES: Charles, where did you
16 get this document? This isn't --- doesn't have our Bates
17 number on it.

18 ATTORNEY CROOKS: No, it doesn't. But I
19 do think it came from --- honestly, I'm not sure --- I
20 mean, if you guys didn't give it to us, I don't know how
21 we got it.

22 ATTORNEY JEFFRIES: That's not the ---
23 this isn't the copy that they had in their investigation
24 file because Scott's name isn't redacted. In the copy

1 that we had of their investigation file, his name's
2 redacted. I think is from somewhere else.

3 ATTORNEY CROOKS: Good point.

4 All right.

5 Well, honestly, I don't know.

6 ATTORNEY JEFFRIES: This is a print off.

7 ATTORNEY CROOKS: I don't know. I don't
8 --- I don't think this was part of the FBI production
9 because it still would've borne your control series.

10 ATTORNEY JEFFRIES: Yeah. I think this
11 either came from the prosecuting attorney's office or
12 from the magistrate court seeing how the name is not
13 redacted, and it doesn't have the ---

14 ATTORNEY CROOKS: Okay.

15 ATTORNEY JEFFRIES: --- Bates numbering on
16 it. For what it's worth ---.

17 ATTORNEY CROOKS: Well, just to give you
18 some comfort on this point, I'm not --- I'm not really
19 trying to mount some argument that you guys are violating
20 the expungement order.

21 ATTORNEY JEFFRIES: Well, just, I think
22 that the ---

23 ATTORNEY CROOKS: I mean, if that's what
24 you're worried about.

1 ATTORNEY JEFFRIES: --- attached letter.

2 I --- I can represent it in --- in our file. The one
3 that the state police, the May 3rd, 2013 letter from
4 Matthew Stout to --- to your client is in with this.

5 ATTORNEY CROOKS: Well, that was what I
6 was trying to really get figured out. You may be right.

7 BY ATTORNEY CROOKS:

8 Q. Maybe this came from the --- would this have
9 been turned in? Lieutenant, would this report have been
10 turned in to the --- the magistrate's court? Or
11 produced, perhaps, as --- as Discovery ---

12 A. It wouldn't have been ---.

13 Q. --- in the criminal case?

14 ATTORNEY JEFFRIES: Could be that.

15 ATTORNEY PHILLIPS: Yeah. I'm sure it
16 would've been in the criminal case.

17 ATTORNEY CROOKS: Mike Benninger would
18 have asked for it.

19 ATTORNEY JEFFRIES: Yeah. And would have
20 got it.

21 ATTORNEY CROOKS: He would've got it. So
22 now I --- if you were concerned that I was going to argue
23 that you guys were violating the expungement order, don't
24 worry about that. I won't.

1 ATTORNEY JEFFRIES: No. I was just trying
2 to clarify what the attached letter was.

3 ATTORNEY CROOKS: Okay.

4 Yeah. Well, that was the issue I was
5 trying to sort was ---.

6 ATTORNEY JEFFRIES: In our copy, the ---
7 the letter is with this. It's in your closed file.

8 ATTORNEY CROOKS: Well, that was the
9 question I just asked Lieutenant Kief is, you know. You
10 read this, and it's like, well, it should just be, like
11 --- like he's already said, Exhibit 5 should be on top of
12 this, and there should be a letter from the lawyer
13 attached to the back of it. I don't know if we went
14 through patiently and looked at every page. We probably,
15 maybe, missed it. See attached emails is referenced on
16 page.

17 So I'm trying to guess, and --- that this
18 is part of a package of stuff in the original police
19 file, although the police file would, no doubt, be
20 redacted.

21 So all right. I guess --- I guess I'm
22 ultimately not too panicked about it because I think we,
23 from my point, used these referenced attached otherwise
24 anyway. I don't think I'm --- I don't think I'm being

1 denied it.

2 BY ATTORNEY CROOKS:

3 Q. So would you have reviewed this report before
4 Gaskins put his name at the end of it?

5 A. I don't know who signed off on that report,
6 sir.

7 Q. Corporal Gaskins.

8 A. Well, I know that. As far as supervising,
9 there's four sergeants at the Morgantown Detachment. I
10 don't know who would've signed off on the --- on the
11 actual report. I don't know if I did. I --- I don't
12 know that.

13 Q. Fair enough. But let me explain to you why I'm
14 asking.

15 A. Sure.

16 Q. Because the only signature I see is Corporal
17 Gaskins'.

18 A. True, yes.

19 Q. I mean, I don't see a countersignature ---

20 A. Correct.

21 Q. --- of any supervisor.

22 Do you know if this was sent to Captain
23 Merrill?

24 A. I don't know that, sir.

1 Q. Captain Merrill just sort of drops out of the
2 picture as far as I can make it out from the documents
3 that I've seen in this case. What can you tell me to
4 help me understand where he went? I mean, he started out
5 I want to know what's going on. You --- you copy me on
6 this, and ---.

7 A. What I ---.

8 Q. That enough?

9 A. What probably happened, sir, is Captain Merrill
10 is --- he was a figure at the Morgantown Detachment. He
11 worked out of Shinnston, but he lived in Mon County. He
12 was frequently at the --- the detachment here in
13 Morgantown.

14 Q. Okay.

15 A. I would say they had discussions about the case
16 where Captain Merrill wanted to be updated. He just
17 asked Corporal Gaskins when he saw him at the detachment.

18 Q. Uh-huh (yes).

19 A. That's not uncommon for the Captain to stop
20 into the detachment, and speak to the troopers. And hey
21 what's going on?

22 Q. I hear you.

23 A. Yeah. So I would say that's what happened, but
24 I can't be 100 percent.

1 Q. He did specify, though, he wanted emails.

2 A. Sure. Sure. That's the end of all the memos
3 like that, that they want to be updated ---

4 Q. Okay.

5 A. --- by email. It's been my experience that if
6 they speak to us about the topic, or --- or the
7 investigation, that satisfies them. They just want to
8 know what's going on with it, to --- to be updated. So
9 if they speak to us, they're satisfied with that also.

10 Q. Okay.

11 Well, so what I hear you saying is that it
12 could be that he wasn't copied this report, and maybe he
13 wasn't sent emailed copies of any updates, that maybe he
14 was satisfied with what he heard when he stopped in ---

15 A. Correct.

16 Q. --- and let it go at that.

17 A. Yes, sir.

18 Q. Okay.

19 After this --- you said when you went to court
20 of April 7, 2016 and the case got withdrawn or dismissed
21 that you didn't anticipate that, and that you were
22 disappointed. Did you go back to barracks, and --- and
23 call Captain Merrill and tell him what happened?

24 A. I'm sure he found out some --- I don't remember

1 if I called him, or --- somebody called him, I'm sure, to
2 let him know what the disposition was.

3 Q. I'm equally sure. I'm just trying to find out
4 who it was that called him.

5 A. I --- I don't know that, sir. I don't know
6 that.

7 Q. Some days there's hell to tell the Captain, and
8 I'm wondering if you were the one to do it.

9 A. I don't remember that, sir.

10 Q. Okay.

11 I think that's all the questions I'm going to
12 ask you right now. Give the other --- others a chance.

13 ---

14 EXAMINATION

15 ---

16 BY ATTORNEY PHILLIPS:

17 Q. Okay.

18 Lieutenant Kief, I'm --- go back to your first
19 meeting with Ellen back and testified at the beginning of
20 your deposition. So I'll just make --- make sure I have
21 the sequence in order here.

22 You called Ellen after Tom Ballock called ---
23 called you complaining about an alleged affair between
24 Ellen and Trooper Berry?

1 A. Correct.

2 Q. Okay.

3 And --- and you told Ellen what --- what Tom
4 had called about.

5 Correct?

6 A. Correct.

7 Q. Yeah. I had --- and then Ellen said she was
8 being harassed by Scott?

9 A. Yes.

10 Q. Okay.

11 Did she also say she was being harassed by Tom?

12 A. I can't remember that.

13 Q. Okay.

14 And she said he was --- she was being harassed
15 by a volume of unwanted emails and texts?

16 A. Correct.

17 Q. And you said that she could come in and talk to
18 you about that?

19 A. Right.

20 Q. Okay.

21 And so did she tell you that Scott Ballock was
22 an FBI agent at that time, if you recall?

23 A. I'm sure she did.

24 Q. Okay.

1 So then she came in later that --- later that
2 evening.

3 Tight?

4 A. Yes, sir.

5 Q. And --- and your testimony kind of cut off
6 there when being asked questions by Mr. Crooks. What was
7 --- when you met in person, what was discussed? Did
8 Ellen just give you more details about the harassing
9 emails and texts?

10 A. Ms. Costlow was emotional. She had ---.

11 ATTORNEY CROOKS: She was --- I didn't
12 hear you.

13 THE WITNESS: Emotional. I'm sorry.

14 ATTORNEY CROOKS: Okay.

15 THE WITNESS: She said that she's being
16 bombarded with text messages, emails. And that there was
17 no letup, that she was constantly being harassed.

18 BY ATTORNEY PHILLIPS:

19 Q. Okay.

20 A. And that her attorney had the context of these
21 emails and text messages.

22 Q. Okay.

23 Did she --- did she show you any of the --- any
24 sampling o the emails or texts at that time?

1 A. Not that night, sir. Not --- not that I
2 believe.

3 Q. Okay. Okay.

4 And so that was about the extent of your first
5 --- that first meeting?

6 A. Yes, sir.

7 Q. Okay.

8 And prior to disclosing this to you when you
9 called after Tom Ballock's call, to your knowledge, Ms.
10 Costlow had never called the --- called the state police
11 to complain about receiving unwanted texts and emails
12 from --- from Scott Ballock?

13 A. She wouldn't have complained.

14 Q. Yeah. She --- okay. She hadn't --- she hadn't
15 --- to your knowledge, she hadn't tried to initiate any
16 investigation until you happened to call her?

17 A. She didn't know it was a violation of law for
18 him to do that.

19 Q. Really?

20 A. Yes.

21 Q. Okay.

22 So --- so fair to say, she wasn't, you know,
23 she ---would you say she just disclosed this to you
24 because she was afraid?

1 A. Yes.

2 Q. Not seeking any kind of any resolve, any remedy
3 for this?

4 A. No, sir.

5 Q. Okay.

6 Is it your understanding that she --- she
7 trusted you, and ---?

8 A. She was --- this was going on in her life, and
9 she didn't know how to stop it.

10 Q. Okay.

11 So was the --- what was the next step then?
12 Did --- then at some point, was the next step a DVD
13 copied by her attorney delivered to you, or ---?

14 A. There was --- yes, the CD, and she got that
15 information. Or I can't --- I can't remember how that
16 was given to us.

17 Q. Okay.

18 A. Whether we got it from Matthew Stout or how we
19 got that. I can't remember that.

20 Q. Okay.

21 And at what point did --- at what point did you
22 talk to Captain Merrill? Was it after --- after you
23 received the DVD?

24 A. I don't know that, sir. I don't know if it was

1 before or after we received the DVD. Well before we
2 started the investigation, before we looked at anything,
3 we would have to get permission from --- from the
4 Captain. Well, Charles through the Captain.

5 Q. Before you looked at the DVD ---?

6 A. I'm sure we did, yes.

7 Q. Okay. Okay.

8 So you did --- did that. And then were you the
9 first person to view the DVD?

10 A. I don't believe I viewed the DVD, sir. I
11 believe it was Corporal Gaskins ---

12 Q. Okay.

13 A. --- that, yes.

14 Q. Okay.

15 A. I might be a little bit off on my times.

16 Q. Yeah.

17 A. It's been a long time ago, but ---.

18 Q. And Corporal Gaskins reported what he found to
19 you?

20 A. He would during his investigation.

21 Q. Okay.

22 And so did you --- did you view the texts and
23 --- and emails also?

24 A. Some of them.

1 Q. Okay.

2 Just not in as --- not as thoroughly as
3 Corporal Gaskins?

4 A. Correct.

5 Q. Okay.

6 And the text and emails, you've described that
7 as --- as Ms. Costlow being bombarded. They're --- they
8 --- they don't stop, I guess you're saying?

9 A. Correct.

10 Q. And are the content of some of them, some of
11 them demeaning in a way?

12 A. Yes, sir. I would say that, Yes, sir.

13 Q. Yeah. Some of them abusive?

14 A. Demeaning, maybe threatening in manner.

15 Q. Uh-huh (yes). You think Ms. Costlow is
16 justified in being afraid by the --- the number and the
17 content of the emails?

18 A. Yes, sir.

19 Q. And from your --- in your review, did --- did
20 the volume and the content --- well, let me go back. And
21 also, at many points in this --- in the emails from back
22 and forth between Mr. Ballock and Ms. Costlow, Ms.
23 Costlow tells him to stop?

24 A. Correct.

1 Q. That was in the she doesn't want these, she
2 doesn't want to receive any --- any more communication?

3 A. Correct.

4 Q. And he does not stop?

5 A. Correct.

6 Q. All right.

7 And you found the --- the volume of the emails,
8 the content, and the fact that she --- that he refused to
9 stop when asked is --- constitutes a criminal offense?

10 A. Correct.

11 Q. Okay.

12 And then, the kind of chain of this, you ---
13 and Corporal Gaskins also found probable cause that Scott
14 Ballock had committed two criminal offenses by virtue by
15 sending these emails and texts?

16 A. Corporal Gaskins and the prosecuting attorney
17 thought there was enough evidence to do that. The
18 magistrate found probable cause.

19 Q. Okay.

20 A. And administered the arrest warrants.

21 Q. Yeah.

22 Okay.

23 And then --- and then a couple, three years
24 later, Scott Ballock also signed the paper saying that

1 there was probable cause for the charges?

2 A. Correct.

3 Q. Okay.

4 And I guess --- and when Ms. Costlow first came
5 to you, was she afraid for her safety?

6 A. Seemed to be, yes, sir.

7 Q. Yeah. Was she still afraid at times during ---
8 while the criminal proceedings were going on?

9 A. Yes, sir.

10 Q. Were you afraid for her safety at any time?

11 A. I found some of the emails and texts to be
12 concerning.

13 Q. Uh-huh (yes). Think she has any reason to be
14 afraid today?

15 A. I don't know that.

16 Q. And you discussed the --- was --- was any other
17 trooper working on the case with Corporal Gaskins?

18 A. No, sir.

19 Q. Okay.

20 And did you --- did you formally discuss the
21 case with anyone else with the state police besides
22 Gaskins and --- and Merrill?

23 A. If the Captain had asked questions about it,
24 I'm sure I answered his questions.

1 Q. Okay.

2 Did you ever discuss the investigation with
3 Trooper Berry?

4 A. No, sir.

5 Q. To your knowledge, did anyone?

6 A. Not that I know of, sir.

7 Q. All right.

8 Yeah. To your knowledge, did he play any role
9 whatsoever in the investigation?

10 A. Not that I know of, sir.

11 Q. Okay.

12 And --- and I was a little confused with the
13 communications with the FBI. Is it your understanding
14 that --- that state police spoke with the FBI to where
15 some decision was made about --- about where Mr. Ballock
16 should be arrested?

17 A. We conferred with the FBI about how he was
18 going to be arrested.

19 Q. Okay.

20 And who represented the state police in that
21 discussion?

22 A. I cannot remember that, sir. I don't know if I
23 spoke to the FBI or Corporal Gaskins. I can't recall.

24 Q. Okay.

1 And so the --- the arrest in family court, well
2 that was done, I guess, obviously. But now, with the
3 FBI, they had an agent there?

4 A. Yes, sir.

5 Q. And it's fair to say they approved the arrest
6 occurring in that matter? Manner. At that --- at that
7 place, at that time?

8 A. They didn't say anything to the contrary.

9 Q. Okay.

10 And you --- and you thought it was --- well I
11 guess the arrest in family court had the advantage that
12 he wouldn't be --- Mr. Ballock wouldn't be armed.

13 Right?

14 A. Correct.

15 Q. And --- and it would be less --- less
16 embarrassing for him than being arrested at work?

17 A. Work or home or work.

18 Q. And possibly in front of his kids?

19 A. Absolutely.

20 Q. You wanted to avoid that?

21 A. Yes, sir.

22 Q. And so then you said that Ms. Costlow
23 originally was upset that an agreement had been --- her
24 initial reaction to the agreement that when --- the

1 dismissal, the charges against Mr. Ballock, her initial
2 reaction was she was kind of upset? She didn't like it?

3 Am I correct?

4 A. Correct.

5 Q. But then after talking with Marcia Ashdown, she
6 --- she had a different reaction to the agreement?

7 A. I think she came to terms with it.

8 Q. Okay.

9 And you said that, I guess, your impression
10 that she liked the benefit of being protected against
11 future contact ---

12 A. Correct.

13 Q. --- from Scott. And also, did you get a sense
14 that she was just relieved to have it over with?

15 A. Yes. Absolutely, yes.

16 Q. And she liked the idea that --- was it your
17 impression that she thought by agreeing to this that Mr.
18 Ballock could keep his job?

19 A. I believe so, sir.

20 Q. Yeah. And she had expressed to you, at least
21 once, that she wanted Scott to keep his job?

22 A. Yes, sir.

23 Q. And thought, you know, well-paying job, it'd be
24 good, you know, to support their children?

1 A. Correct.

2 She just wanted the harassment to stop.

3 Q. Yeah.

4 A. For the texting.

5 Q. And I guess you didn't mention it, but in
6 reviewing the --- the texts and emails from, which you
7 and others of the state police and the prosecutor's
8 office concluded crimes were being committed. Can you
9 tell me what --- what role Scott Ballock's position as an
10 FBI agent played in that? Did that kind of --- did that
11 make it more threatening, in your opinion, more --- more
12 abusive, harder to ---?

13 A. The only thing I can think of in that respect
14 was that Mr. Ballock would threatened Mrs. Ballock with
15 the --- Ms. Costlow --- with the FBI.

16 Q. Uh-huh (yes).

17 A. That she would be arrested or --- or something
18 like that.

19 Q. Yeah.

20 Okay.

21 You don't think, in general, repeated, unwanted
22 emails coming from a law enforcement officer can have
23 even more harassing and intimidating effect?

24 A. I don't know with her. I don't know. That

1 never really, you know. She --- she was afraid of him,
2 and she --- she would --- she always said that she was
3 afraid of his job because he would threaten her with his
4 job.

5 Q. Right.

6 Okay.

7 But I take it --- okay. I see it didn't. His
8 position as an FBI officer really didn't ---?

9 A. In ---?

10 Q. Yeah. Come into --- it's just --- you just ---
11 just saw the texts, that his --- his occupation didn't
12 really matter.

13 A. That was a violation of law regardless of if he
14 was an FBI agent or not.

15 Q. Yeah.

16 Okay.

17 And --- let's back up. A point I wanted to
18 make with the --- the investigation was based upon the
19 emails and texts, correct? They --- there's talk about
20 whether or not witnesses were interviewed, that the
21 emails and texts spoke for themselves? Basically, the
22 investigation.

23 A. Correct.

24 Q. Were there --- if --- if Kenny Ice were

1 interviewed, that wouldn't change what the texts and
2 emails said?

3 A. Not that I can think of, sir.

4 Q. Or if anyone else was interviewed. And the ---
5 I guess, whether material in the email was true or not
6 was irrelevant in your analysis, wasn't it? It was just
7 they were --- they were unwanted. They kept coming.

8 A. Yes, sir.

9 Q. Volume, thousands of them after Ms. Costlow
10 said don't contact me?

11 A. Correct.

12 Q. And then we discussed some had even more
13 inappropriate or threatening nature?

14 A. Correct.

15 Q. And I guess the entire set of texts and emails
16 that Mr. Crooks referred to as 800 and some pages
17 earlier, those were all turned over to the prosecutor's
18 office?

19 A. Correct. Yes, sir.

20 Q. And in your understanding, Mr. Ballock has
21 never disputed that he wrote all those texts and emails?

22 A. No, sir.

23 Q. Okay.

24 In fact, he hasn't disputed it in this case?

1 A. Correct.

2 Q. Okay.

3 And I guess --- and I guess --- do you --- do
4 you know on the criminal case, there's testimony ---
5 testimony about it dragging on because of Magistrate
6 Mullins' illness. Is it your impression that Scott was
7 in agreement with waiting until Magistrate Mullins
8 recuperated rather than having it transferred to another
9 magistrate?

10 A. Yes, sir. It was our belief that --- the
11 information that we got, they were waiting on Magistrate
12 Mullins to come back from his medical leave.

13 Q. Okay.

14 And that was ---?

15 A. We had the same questions.

16 Q. Okay.

17 Mainly --- and that was the position of --- of
18 Scott and his attorney?

19 A. Yes, sir.

20 Q. Okay. Okay.

21 I have nothing --- nothing further for now.

22 ATTORNEY JEFFRIES: Just a few follow ups.

23 If you go back to Exhibit 2, okay, this is
24 the Monongalia County Call Summary Report of Ms. Ellen's

1 call there at Ms. Costlow's house on August 12th, 2013.

2 ATTORNEY CROOKS: What was the exhibit
3 number on that?

4 ATTORNEY JEFFRIES: Two.

5 ATTORNEY CROOKS: Thank you.

6 ---

7 EXAMINATION

8 ---

9 BY ATTORNEY JEFFRIES:

10 Q. You don't routinely, at state police, receive
11 call summary reports from the sheriff's departments in
12 various counties, do you?

13 A. No, sir.

14 Q. Okay.

15 And I believe you testified that you had seen
16 this at some point, but you couldn't recall when. Do you
17 have any reason to believe that you had seen this report
18 at the time that Ms. Costlow contacted you about filing a
19 complaint against Mr. Ballock?

20 A. No, sir.

21 Q. And am I correct that different law enforcement
22 agencies have different policies on what's put in the
23 report or when it has to be filed?

24 A. Correct.

1 Q. So the Monongalia County's police is not the
2 same as the state polices'?

3 A. Correct.

4 Q. You testified earlier in response to some
5 questions from Mr. Crooks that you harbor ill feelings
6 against Scott Ballock and his father. Do you recall that
7 testimony?

8 A. Yes, sir.

9 Q. Did you harbor any ill feelings towards Scott
10 Ballock at the time that Ms. Costlow first contacted you?

11 A. No, sir.

12 Q. When did you start to --- to develop ill
13 feelings towards the Ballocks?

14 A. When my --- their focus became to harass me on
15 the Internet.

16 Q. And that was after the --- Mr. Ballock was
17 arrested?

18 A. Yes, sir. I believe so.

19 Q. And how did they harass you on the Internet?

20 A. Just putting certain things on the Internet
21 about my personal life, my pictures, calling me names,
22 slandering the investigation, slandering my role in the
23 investigation, pretty much stating that I had an affair
24 with Ms. Costlow, pretty much putting it out there that I

1 was a pretty --- I wasn't a very good police officer.

2 Q. And so they were posting their --- I guess Tom
3 Ballock was posting stuff on the Internet about the
4 criminal investigations. So I take it from that that the
5 websites didn't come up until after Mr. Ballock was
6 arrested?

7 A. I believe so, yes.

8 Q. You talked about after the charges were
9 dismissed, and the charges against Mr. Ballock were
10 dismissed. You had some contact with the FBI. Who
11 initiated that contact?

12 A. After the charges were dismissed?

13 Q. That's correct.

14 A. That would be the FBI.

15 Q. They contacted you and said they wanted to
16 talk?

17 A. Correct. Yes.

18 Q. When you're conducting an investigation, do you
19 routinely contact the suspect and --- and give them a
20 warning that you're preparing to file charges, and that
21 if they don't stop the behavior, you will fire charges?

22 A. No, sir.

23 Q. That's not the rule of the police to issue
24 warnings, is it?

1 A. No. No, sir.

2 ATTORNEY JEFFRIES: That's all I got.

3 ATTORNEY CROOKS: Thank you, Lieutenant.
4 Appreciate your time and careful attention to all my
5 questions.

6 ATTORNEY JEFFRIES: Lieutenant Kief, you
7 have the right to review your deposition transcript or
8 you can waive the right, and just accept it as it is. Do
9 you want to read or do you want to waive?

10 THE WITNESS: Can we discuss that?

11 ATTORNEY CROOKS: Just have him waive.

12 ATTORNEY JEFFRIES: He'll read. Let's
13 just --- he'll read.

14 ATTORNEY CROOKS: All right.

15 * * * * *

16 DEPOSITION CONCLUDED AT 7:23 P.M.

17 * * * * *

18

19

20

21

22

23

24

1 STATE OF WEST VIRGINIA)

3 CERTIFICATE

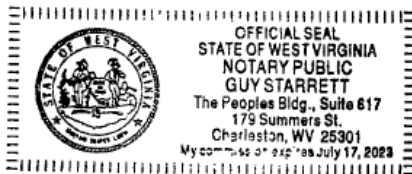
4 I, Guy Starrett, a Notary Public in and for the
5 State of West Virginia, do hereby certify:

6 That the witness whose testimony appears in the
7 foregoing deposition, was duly sworn by me on said date,
8 and that the transcribed deposition of said witness is a
9 true record of the testimony given by said witness;

10 That the proceeding is herein recorded fully and
11 accurately;

12 That I am neither attorney nor counsel for, nor
13 related to any of the parties to the action in which these
14 depositions were taken, and further that I am not a
15 relative of any attorney or counsel employed by the
16 parties hereto, or financially interested in this action.

17
18 I certify that the attached transcript meets the
19 requirements set forth within article twenty-seven,
20 chapter forty-seven of the West Virginia Code.





Court Reporter